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code of federal regulations

Wildlife and Fisheries

COMPLETED

50

PART 200 TO END
Revised as of October 1, 1985

822-005-00175-2

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code of federal regulations

Wildlife and Fisheries

50

PART 200 TO END

Revised as of October 1, 1985

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1985), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

John E. Byrne,
Director,
Office of the Federal Register.

October 1, 1985.

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VIII

THIS TITLE

Title 50—FISH AND WILDLIFE is composed of two volumes. The first volume contains Parts 1 to 199 of the current regulations issued by the United States Fish and Wildlife Service as of October 1, 1985. The second volume, containing Part 200 to end, includes the current regulations issued by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; International Regulatory Agencies (Fishing and Whaling), Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations; Marine Mammal Commission; and Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce, as of October 1, 1985.

Alphabetical listings of endangered and threatened wildlife and plants appear in Part 17.

For this volume Beverly Payson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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CROSS REFERENCES: Commercial fishing on Red Lake Indian Reservation, Bureau of Indian Affairs: 25 CFR Part 242.

Disposal of certain wild animals in national parks, National Park Service: 36 CFR Part 10.

Exchanges of land for migratory bird or other wildlife refuges, Bureau of Land Management: 43 CFR 2200.0-1—2272.1.

Fishing, hunting, trapping, and protection of wildlife in national forests and wildlife refuges, Forest Service: 36 CFR Part 241, §§ 261.8, 261.9.

Fishing, hunting, trapping, and protection of wildlife in national parks, memorials, recreation areas, etc., National Park Service: 36 CFR Parts 2, 7, 20.

Fishing and hunting in reservoir areas, Corps of Engineers: 36 CFR 327.8.

Free entry of animals, birds and products of American fisheries under specified conditions, Customs Service: 19 CFR 10.70—10.83.

Grazing areas for wildlife maintenance, Bureau of Land Management: 43 CFR Part 4110.

Making pictures, television production, or sound tracks on areas administered by the United States Fish and Wildlife Service or the National Park Service: 43 CFR 5.1.

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PART 210—NORTH PACIFIC AREA

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§ 210.1 Definition.

(a) For the purpose of the regulations of this part the North Pacific area is defined to include all waters of the North Pacific Ocean and Bering Sea north of 48°30′ north latitude, exclusive of waters adjacent to Alaska north and west of the International Boundary at Dixon Entrance which extend 3 miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland.

(b) The exclusive waters adjacent to Alaska shall be those in which salmon net fishing is permitted under State of Alaska regulations. Federal salmon net fishing regulations in exclusive waters outside of State waters shall be the same as regulations promulgated by the State of Alaska for its citizens.

(Sec. 1, 68 Stat. 698 as amended; 16 U.S.C. 1021 *et seq.*)

[35 FR 7070, May 5, 1970]

§ 210.10 Salmon fishing prohibited, exception.

No person or fishing vessel subject to the jurisdiction of the United States shall fish for or take salmon with any net in the North Pacific area, as defined in this part: *Provided*, That this shall not apply to fishing for sockeye salmon or pink salmon south of latitude 49° north.

(Sec. 1, 68 Stat. 698 as amended; 16 U.S.C. 1021 *et seq.*)

[35 FR 7070, May 5, 1970]

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AUTHORITY: 16 U.S.C. 1151-1175. 16 U.S.C. 1361-1384.

SOURCE: 41 FR 49488, Nov. 9, 1976, unless otherwise noted.

Subpart A—General

§ 215.1 Purpose and scope.

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966. The provisions of these regulations apply to the administration of the Pribilof Islands, the take of fur seals, and the procedures for issuing, amending or rescinding display permits for fur seals.

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 215:

(a) Act means the Fur Seal Act of 1966, 80 Stat. 1091, 16 U.S.C. 1151-1187, Pub. L. 89-702.

(b) Convention means the Interim Convention on Conservation of North Pacific Fur Seals, signed at Washington on February 9, 1957, as amended by the Protocol signed at Washington on October 8, 1963, and as extended by Agreement of September 3, 1969. T.I.A.S. 3948, 5558, 6774; 8 U.S.T. 2283; 15 U.S.T. 316; 20 U.S.T. 2992.

(c) Director means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) Fur seal means Northern fur seal scientifically known as *Callorhinusursinus.*

(e) Public display means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

EFFECTIVE DATE NOTE: At 50 FR 27920, July 8, 1985, an emergency interim rule was issued revising § 215.2, effective July 3, 1985. The expiration date will be announced in the Federal Register. For the convenience of the user, the emergency interim rule is set forth below.

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 215:

(a) "Act" means the Fur Seal Act, as amended, 16 U.S.C. 1151-1175.

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(c) "Fur seal" means north Pacific fur seal, scientifically known as *Callorhinus ursinus.*

(d) "Handicraft articles" means items made by an Indian, Aleut, or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which were commonly produced on or before October 14, 1983, and are composed wholly or in some significant respect of natural materials, and are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tanner registered pursuant to 50 CFR 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

(e) "Public display" means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

(f) "Pribilovians" means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

(g) "Protocol" means the 1984 Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals.

(h) "Subsistence uses" means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal for family consumption; and for barter, or sharing for personal or family consumption.

(i) "Wasteful manner" means any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a fur seal or which is not immediately followed by a reasonable effort to retrieve the fur seal.

[50 FR 27920, July 8, 1985]

§ 215.3 Penalties.

Any person who violates the provisions of Title I of the Act, which relate to the protection of fur seals, or regulations thereunder as set forth in Subpart B of this part, shall be fined not more than $2,000 pr be imprisoned not more than one year, or both. Any person who violates or fails to comply with the regulations relating to the use and management of the Pribilof Islands or to the conservation and protection of the fur seals or wildlife or other natural resources located thereon, as set forth in Subpart C of this part, shall be fined not more than $500 or be imprisoned not more than six months, or both.

Effective Date Note: At 50 FR 27920, July 8, 1985, an emergency interim rule was issued revising § 215.3, effective July 2, 1985. The expiration date will be announced in the Federal Register. For the convenience of the user, the emergency interim rule is set forth below.

§ 215.3 Penalties.

(a) *Criminal penalties.* Any person who knowingly violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part shall, upon conviction, be fined not more than $20,000 for such violation, or be imprisoned for not more than one year, or both.

(b) *Civil penalties.* Any person who violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part may be assessed a civil penalty of not more than $10,000 for each such violation.

[50 FR 27921, July 8, 1985]

Subpart B—Public Display of Fur Seals

§ 215.11 Taking of fur seals for public display.

(a) Fur seals will be made available for public display only to holders of public display permits issued pursuant to § 215.13. All takings of fur seals will be by personnel of the National Marine Fisheries Service. The fur seals will thereafter be made available to a permit holder at a place and under such conditions as determined by the Assistant Administrator.

(b) A fee of $600 per animal will be charged for the services provided by the National Marine Fisheries Service in capturing, caring for and holding animals taken for public display, which shall include the fee for permit issuance. The fee is based upon a reasonable approximation of the costs involved in labor, supervision, administration, and overhead. The Assistant Administrator may change the amount of the fee at any time he determines that a different fee is reasonable. A change in fee may be accomplished by publication in the Federal Register of the new amount, without the necessity of amending these regulations.

[41 FR 49488, Nov. 9, 1976, as amended at 50 FR 27921, July 8, 1985]

§ 215.12 Public display permits.

(a) The Assistant Administrator may issue permits authorizing the possession and transportation of fur seals for public display. Any person desiring to obtain such a permit may make application to the Assistant Administrator. The sufficiency of the application shall be determined by the Assistant Administrator and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The information requested will be used as the basis for determining whether an application is complete and whether a public display permit should be issued. An original and two copies of the complete application shall be submitted to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Assistance in preparing the application may be obtained by writing the above address to the attention of the Marine Mammals and Endangered Species Division, or by calling the Marine Mammals and Endangered Species Division, in Washington, DC (a/c 202/634-7529). In preparing an application for a public display permit, provide the following information:

(1) *Title:* Application for Public Display Permit pursuant to the Fur Seal Act of 1966;

(2) List the date of the application.

(3) If the applicant is a partnership or a corporate entity, set forth the details. If the fur seal to be displayed is to be displayed by a party in addition to the applicant, set forth the name of the party and such other information as would be required if such party were an applicant.

(4) Provide a statement on the purpose of the proposed display, including a brief description of:

(i) The need for the fur seal(s);

(ii) How they will be used.

(5) Provide a description of each animal desired, including the age, sex, and size; and a list of the desired dates of delivery.

(6) Describe the manner of transportation of fur seals including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animals from the capture site to the display facility;

(iv) Length of time in transit for any future move or transfer of the animals that is planned;

(v) The qualifications of the common carrier or agent used for the transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used to hold the animal before and during transportation; and

(vii) Special care before and during transportation, such as salves, antibiotics and moisture.

(7) Describe the contemplated care and maintenance of any fur seal sought, including a complete description of the the facilities where such animals will maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities, and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal(s).

(8) Provide a detailed description of the proposed display, including:

(i) A description of the manner, location and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated display; and

(v) A description of the applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(9) For the year preceding the date of this application, provide the following:

(i) A list of all marine mammals captured, transported or maintained for any purpose by or on behalf of the applicant;

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities including when available copies of post-mortem reports; and

(iv) The steps which have been taken by the applicant to avoid or reduce such mortalities.

(10) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Fur Seal Act of 1966 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(11) The applicant must sign the application.

(b) Upon receipt of an application for a public display permit, the Assistant Administrator shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Assistant Administrator shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Assistant Administrator shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Assistant Administrator may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Assistant Administrator may also consult with any other person, institution or agency concerning the application.

(c) Permits applied for under this section shall be issued, suspended, modified or revoked pursuant to § 215.13. In determining whether to issue a public display permit, the Assistant Administrator shall, among other criteria, consider whether the proposed taking will be consistent with the policies and purposes of the Act: Whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including:

(1) The methods of transportation, care and maintenance to be used with live marine mammals;

(2) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(3) The transferability or assignability of the permit; and

(4) The sale or other disposition of the fur seal and its progeny.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[41 FR 49488, Nov. 9, 1976, as amended at 48 FR 57301, Dec. 29, 1983; 50 FR 27921, July 8, 1985]

§ 215.13 Procedures for the issuance, modification, suspension or revocation of permits.

(a) Whenever a complete application for a permit is received by the Assistant Administrator, he shall, as soon as practicable, publish a notice thereof in the Federal Register. Such notice shall set forth a summary of the information contained in the application. Any interested party may, within 30 days after the date of publication of the notice, submit to the Assistant Administrator his written data or views with respect to the taking proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Except as provided in Subpart D of 15 CFR Part 904, any permit shall be subject to modification, suspension or revocation by the Assistant Administrator in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken and a summary of the reasons therefore;

(2) The steps, if any, which the permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Assistant Administrator within 10 days after the date of receipt of the aforesaid notice or such other date as may be specified in the notice to the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Assistant Administrator and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of the hearing. The Assistant Administrator may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, comments and briefs at the hearing. A summary record shall be kept of the hearing.

(e) The Assistant Administrator shall make a determination regarding the proposed modification, suspension or revocation as soon as practicable after the close of the hearing or if no hearing is held as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the Assistant Administrator's decision to modify, suspend or revoke shall be published in the FEDERAL REGISTER as soon as practicable.

(f) Any permittee shall have the opportunity to request modification of a permit. An application to modify a permit shall contain, to the extent relevant, the information requested in § 215.13. An application to modify a permit shall be processed in accordance with this section.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[41 FR 49488, Nov. 9, 1976, as amended at 48 FR 57301, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984; 50 FR 27921, July 8, 1985]

§ 215.14 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the permittee or his authorized representative who accompanies the transit of a fur seal for which the permit was issued.

(b) A duplicate copy of the permit must be physically attached to the

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container, package, enclosure, or other means of containment in which the fur seal is placed for the purpose of storage, transit, supervision or care.

Subpart C—Administration

§ 215.21 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

§ 215.22 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

§ 215.23 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

§ 215.24 [Reserved]

§ 215.25 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

§ 215.26 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands by posting in public places and brought to the attention of tourists by personal notice.

§ 215.27 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions: (1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, Wash. 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.

[43 FR 5521, Feb. 9, 1978]

Subpart D—Takings for Subsistence Purposes

Source: 50 FR 27921, July 8, 1985, unless otherwise noted.

Effective Date Note: At 50 FR 27921, July 8, 1985, an emergency interim rule added §§ 215.31 through 215.35 (Subpart D), effective July 3, 1985. The expiration date will be announced in the Federal Register.

§ 215.31 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is:

(a) For subsistence uses, and

(b) In each case, not accomplished in a wasteful manner.

§ 215.32 Restrictions on taking.

(a) The Assistant Administrator is authorized to suspend the take provided for in § 215.31 when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

(b)(1) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including organized drives of subadult male fur seals to killing fields and separation into smaller groups for selective stunning followed immediately by exsanguination.

(2) Only subadult male fur seals may be taken. Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(3) The following schedule and take limits apply:

(i) *St. Paul Island.* Any harvest of fur seals on St. Paul Island will be conducted in accordance with the following provisions:

(A) The harvest season will begin on July 8, 1985, and will consist of 19 harvest days. The harvest will terminate when seals have been harvested on 19 days, on August 6, 1985, upon the expiration of this rule, or upon suspension of the harvest by the Assistant Administrator under the provisions of § 215.32(a) whichever occurs first.

(B) A five-day per week harvest schedule will be maintained during the course of the harvest schedule season. Seals may be driven from the following haulouts according to the following schedule:

Monday—Zapadni
Tuesday—Reef
Wednesday—Northwest Point
Thursday—Polovina, Little Polovina, Lukanin, Kitovi
Friday—English Bay

(C) Only male subadult seals 124.5 centimeters or less in length may be taken.

(D) Seals with blue, yellow, or pink roto-tags may not be taken.

(E) Seals with entangling debris may only be taken if so directed by scientists studying fur seal entanglement.

(ii) *St. George Island.* Any harvest of fur seals on St. George Island shall be conducted in accordance with the following provisions:

(A) Fur seals may only be taken at the east haulout area of the North Rookery. No more than two drives may be conducted per week and no more than 50 seals may be taken per day.

(B) Only subadult male seals 124.5 centimeters or less in length may be taken.

(C) The total take on St. George Island shall not exceed 329 seals in 1985. To meet their subsistence needs, air transportation between St. George and St. Paul Islands will be made available to St. George native residents free of charge at least once per week during the St. Paul harvest to allow them to obtain additional quantities of fresh meat, if needed for subsistence uses.

[50 FR 27921, July 8, 1985, as amended at 50 FR 32206, Aug. 9, 1985]

§ 215.33 Disposition of fur seal parts.

(a) No part of a fur seal taken for subsistence uses may be sold or transferred to any person other than an Alaskan Native, as that term is defined in 50 CFR 216.3, unless:

(1) It is a nonedible byproduct which has been transformed into an article of handicraft, or

(2) It is being sent by a Pribilovian to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Pribilovian, or

(3) It is a skin from a fur seal which was taken for subsistence uses, in which case it may be transferred to the United States Government.

(b)(1) Any skins which are transferred to the United States Government will be held pending a determination of their final disposition.

(2) The United States may enter into an agreement as authorized by sections 205(f) and 207 of the Act, 16 U.S.C. 1165(f) and 1167, to ensure the initial processing of transferred skins which is required for their preservation or to provide for assistance in conducting research efforts.

§ 215.34 Cooperation with Federal officials.

Pribilovians who take fur seals for subsistence uses shall, consistent with

5 CFR 1320.7(k)(3), cooperate with the National Marine Fisheries Service's representatives on the Pribilof Islands who are responsible for compiling on a daily basis the following information:

(a) The number of seals taken each day,

(b) The weight of meat taken for subsistence uses,

(c) The extent of the utilization of fur seals taken, and

(d) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(a).

§ 215.35 Effective date.

Subpart D shall cease to have effect upon promulgation of a permanent rule; or upon ratification or provisional application of the Protocol, whichever occurs first.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

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Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§ 216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 216.2 Scope of regulations.

This Part 216 applies solely to marine mammals and marine mammal products as defined in § 216.3. For regulations under the Act, with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

§ 216.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 216:

"*Act*" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522.

"*Alaskan Native*" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"*Authentic native articles of handicrafts and clothing*" means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to § 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

"*Commercial fishing operation*" means the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or otherwise, and whether or not the fish so caught are subsequently sold.

"*Endangered Species*" means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see Part 17 of this title).

"*Incidental catch*" means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"*Marine environment*" means the oceans and the seas, including estuarine and brackish waters.

"*Marine mammal*" means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, other than walrus (seals and sea lions).

"*Native village or town*" means any community, association, tribe, band, clan or group.

"*Optimum sustainable population*" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

"*Pregnant*" means pregnant near term.

"*Secretary*" shall mean the Secretary of Commerce or his authorized representative.

"*Subsistence*" means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

"*Take*" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal, including, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

"*Threatened species*" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"*Wasteful manner*" means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 55536, Dec. 21, 1976]

§ 216.4 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations.* See Subpart H of this part.

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship.

(c) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

(3) A description of the organization staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and certified by the appropriate State official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) of this section, unless otherwise provided by the Secretary.

(f) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(g) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(h) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976]

§ 216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the Act, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15

CFR Part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 50 FR 12785, Apr. 1, 1985]

§ 216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216 or in Part 228, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 47 FR 21254, May 18, 1982]

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this Part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, and sales.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

§ 216.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides, in effect, that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

> The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the Act. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

§ 216.15 Depleted species.

The following listed species have been designated by the Director as depleted pursuant to the provisions of the Act.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

[41 FR 30120, July 22, 1976, as amended at 42 FR 60150, Nov. 25, 1977]

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this Section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a)(1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidential catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel engaged in commercial fishing operation involving the utilization of purse seines to capture yellowfin tuna and which does not operate under a general permit and certificates of inclusion shall not carry more than two speedboats.

(b) *General permits.* (1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed or dragged gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear.

(ii) *Category 2: Encircling gear, pursue seining involving the intentional taking of marine mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category.

(iii) *Category 3: Encircling gear, pursue seining not involving the international taking of marine mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals.

(iv) *Category 4: Stationary gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets; and

(v) *Category 5: Other gear.* Commercial fishing operations utilizing trolling, gill nets, hooks and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general, permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group of class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the Act, and the applicable regulations established under section 103 of the Act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the Act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and four copies of the application for general permit shall be submitted to the Assistant Administrator for Fisheries (hereinafter, the Assistant Administrator), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235. Applications should be received not less than 180 days prior to the date upon which the permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202-634-7461.

(4) A general permit shall be valid for the time period indicated on the

face of the permit. General permits may contain terms and conditions prescribed in accordance with section 104(b)(2) of the Act, 16 U.S.C. 1374(b)(2). General permits may be suspended, revoked, modified, or denied. Procedures governing permit sanctions or denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the FEDERAL REGISTER. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the FEDERAL REGISTER notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the FEDERAL REGISTER notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under § 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion*—(1) *Vessel certificates of inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided five (5) days advance written notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's certificate of inclusion.* The person in charge of and actually conducting fishing operations (hereinafter referred to as the operator) on any vessel engaged in commercial fishing operations for which a Category 2 general permit is required under this subpart, shall be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on any purse seine vessel having a valid vessel certificate of inclusion for Category 2. In order to receive a certificate of inclusion, the operator shall have satisfactorily completed required training. An operator's certificate of inclusion shall be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, and 5 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries

Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) *Fees.* (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories—1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; and 5: Other gear—$10.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of $.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories—1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; and 5: Other gear—$1.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the FEDERAL REGISTER of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(8) Failure to comply with provisions of the general permit, certificate, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the Act. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals*—(i) *Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(*1*) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Dephinus delphis*) species; or

(*2*) Any other species or stock or marine mammals that does not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each calendar year by U.S. vessels in the course of commercial fishing operations will be limited to:

Quotas for each calendar year		Take	Encirclement	Mortality[1]
Species/stock	Management unit			
Spotted dolphin.	(northern offshore)[2].	16,570,000	10,338,000	20,500
Do	(southern offshore).	4,605,000	2,873,000	5,[illegible]7
Do	(coastal)	202,000	126,000	[3] 250
Spinner dolphin.	(eastern)	2,222,000	1,386,000	[3]2,750
Do	(northern whitebelly).	1,205,000	699,000	5,321
Do	(southern whitebelly)[4].	568,000	329,000	2,506
Common dolphin.	(northern tropical)[5].	723,000	450,000	1,890
Do	(central tropical).	2,619,000	845,000	8,112
Do	(southern tropical).	1,306,000	421,000	4,045
Striped dolphin.	(northern tropical).	28,000	21,000	429
Do	(central tropical).	118,000	89,000	1,822
Do	(southern tropical).	265,000	199,000	4,095

[1] The U.S. allowable mortality in any one year may not exceed 20,500.

[2] Fifty percent of replacement yield for the northern offshore spotted dolphin is 42,888; however, the maximum allowable mortality in any year is 20,500.

[3] Mortality level established by Pub. L. 98-364; not subject to flexible mortality schedule published in 46 FR 42068-42069 (August 19, 1981).

[4] Includes allowance for mixed species take.

[5] Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the FEDERAL REGISTER. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the FEDERAL REGISTER not less than seven days prior to the effective date.

(C) Except for the coastal spotted dolphin stock and the eastern spinner dolphin stock, if at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit is valid until surrendered by the permit holder or suspended or terminated by the Assistant Administrator provided the permittee and certificate holders under this part continue to use the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications must be consistent with and necessary to carry out the purposes of the Act. Any modifications proposed by the Assistant Administrator involving changes in the quotas will include the statements required by section 103(d) of the Act. Modifications will be proposed in the FEDERAL REGISTER and a public comment period will be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the FEDERAL REGISTER, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the Act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator will provide the requesting party or parties with his decision. If a request is denied, the Assistant Administrator will state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator will render a decision within 20 days from receipt of the notice.

(ii) *General conditions:* (A) Marine mammals incidentally taken shall be immediately returned to the environment where captured without further injury. In addition to the specific porpoise rescue requirements established in § 216.24(d)(2), the operators of purse seine vessels shall take every possible precaution to refrain from causing or permitting incidental mortality and serious injury of marine mammals. Operators shall not set on marine mammals when conditions of wind, sea state, visibility, or the number of marine mammals and/or fish prevent the effective use of backdown and other required porpoise rescue procedures.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "incidental catch" in § 216.3 of this part and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) Operators of all certificated vessels shall maintain daily marine mammal logs provided by the Regional Director, Southwest Region, National Marine Fisheries Service. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. Certified copies of completed marine mammal logs shall be mailed or delivered at the conclusion of each fishing voyage to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, within 48 hours after arrival in any port. If no sets involving marine mammals were made during a voyage, a marine mammal log stating such shall be submitted.

(D) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting requirements:* In accordance with § 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met:

(*1*) Unloads more than 400 tons of any species of tuna; or (*2*) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (*3*) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at leat ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The vessel certificate holder of each certificated vessel without an observer onboard, and fishing inside the Inter-American Tropical Tuna Commission's Yellowfin Regulatory Area is required to report within 48 hours prior to departure from port and within 48 hours after arrival in port, of the vessel's actual departure or arrival date, including any changes in schedules that may occur after the original notification. The report shall include the name of the vessel and the location of the port of the scheduled departure or arrival, and shall be telephoned to 714-233-5511, the Southwest Regional Office's 24-hour answering service.

(D) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) *Vessel gear and equipment requirements:* A vessel certificate issued pursuant to paragraph (c)(i) of this section will be valid only for a vessel equipped with a porpoise safety panel in its purse seine, and which uses the other gear, equipment, and procedures described herein. The vessel certificate holder shall be held responsible for providing and maintaining, in a functional and seaworthy condition, the required porpoise safety panels and all other required gear and equipment used in the course of catching and landing tuna. The requirement for the porpoise safety panel and other gear and equipment are as follows:

(A) *Porpoise safety panel*—Class I and II vessels: For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning 75 to 100 fathoms from the bow ortza, and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing.

(B) *Porpoise safety panel*—Class III vessels: For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall be installed beginning 60 to 100 fathoms from the bow ortza and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing.

(C) *Porpoise apron:* Each Class III vessel shall have installed in its purse seine net, a triangular-shaped porpoise apron consisteing of small mesh not to exceed 1¼" stretch mesh, 85 to 95 fathoms in length, laced between the corkline and the porpoise safety panel. The bow end of the porpoise apron shall begin approximately 10 to 15 fathoms (depending on the depth of the net) outboard of the end of the third bunchline and extend toward the stern of the net such that the peak of the porpoise apron triangle shall coincide with the apex of the backdown channel in the net. The base of the porpoise apron shall be laced to the upper edge of the porpoise safety panel. The upper edges of the porpoise apron shall be tapered at a 5 mesh, 2 bar rate from each end such that the tapers intersect at the center of the porpoise apron. The depth of the porpoise apron at its center shall be 443 to 463 meshes.

(D) *Porpoise apron approval:* The porpoise apron shall be installed under the supervision of a National Marine Fisheries Service designated representative: A trial set(s) shall be conducted under supervision of a National Marine Fisheries Service designated representative after installation of the porpoise apron to insure proper installation and operation of the apron. During the trial set(s), the stern tiedown point and outboard bow bunchline mark shall be determined and permanently marked so as to be clearly visible from the vessel. Each time a super apron is reinstalled after removal from a net or the net depth is altered, the vessel and gear shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region, who may require that another trial set(s) be made for proper apron alignment and adjustment. The vessel certificate holder shall provide at least five (5) days advance notification to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of the time and place of installation of the porpoise apron system. The certificate of inclusion for any vessel whose certificate holder has failed to notify the National Marine Fisheries Service of the date of installation shall be invalid until completion of the apron inspection and trial set(s).

(E) *Porpoise safety panel markers:* Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(F) *Porpoise safety panel hand holds:* Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1⅜" diameter cylindrical-shaped object meets resistance.

(G) *Porpoise safety panel corkline hangings:* Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1⅜" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1⅜" diameter cannot be inserted.

(H) *Bunchlines:* Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net to allow at least three towing points to be established near one-quarter, one-half, and three-quarter net from the bow ortza. A towing point must be established between two adjacent bunchlines; one bunchline reversed or unattached at both ends. Six bunchlines other than bow bunchlines are necessary to establish three towing points. The towing ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers. At least a 20-fathom length of corkline shall be free from bunchlines at the apex of the backdown channel.

(I) *Speedboats:* Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(J) *Rubber raft:* An inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all certificated vessels.

(K) *Facemask and snorkel:* At least two facemasks and snorkels shall be carried on all certificated vessels.

(L) *Floodlights and spotlight:* All certificated vessels shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and spotlight to intermittently illuminate the backdown channel and apex.

(M) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel inspection:* (A) *Annual:* At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) *Reinspection:* Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) *Failure to pass inspection:* A certificate of inclusion for a vessel with gear which is not in compliance with these regulations or maintained in a functional and seaworthy condition, shall be invalid until such deficiencies in gear or conditions are corrected and approved by an authorized National Marine Fisheries Service Inspector.

(vi) *Operator training requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine mammal release requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) *Use of speedboats:* On every set involving marine mammals, two speedboats equipped for towing shall be immediately available. At least one shall be manned and in the water. The second one, may be manned or unmanned, and may remain either in the water or in the davits. Both shall be ready for use until backdown commences. Speedboats shall tow on bunchlines whenever net collapse begins or on the corkline if canopies of loose webbing form whenever necessary to prevent marine mammal entrapment.

(B) *Backdown procedure:* Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(C) *Hand rescue:* During backdown, a minimum of two rescuers shall aid with the release of marine mammals. If live marine mammals remain in the net after backdown, a minimum of two rescuers shall hand release them.

(D) *Prohibited use of sharp or pointed instrument:* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(E) *Use of rubber raft, facemask, and snorkel:* A rubber raft suitable as a porpoise observation and rescue platform shall be launched inside the net near the time of tying down for the backdown maneuver. The raft shall be used by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The crewman in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net and, if they are not, make every effort to remove them before backdown is terminated.

Taking into consideration the safety of all personnel, all live marine mammals that remain in the net after backdown shall be herded to areas where they can be easily released.

(F) *Prohibited brailing of live marine mammals:* All release procedures shall continue until all live marine mammals are removed from the net prior to initiating the brailing operation. Brailing live marine mammals from the net is prohibited.

(G) *Prohibited setting at sundown:* On every set involving marine mammals, the net skiff shall be released at least one and one-half hours before sunset; release of the net skiff after this time is prohibited.

(H) *Use of lights:* If the backdown maneuver or other required release procedures continue past one-half hour after sunset, lights shall be used to insure that release procedures are properly performed and that all live marine mammals are removed from the net. Floodlights shall be used to attract fish toward the main vessel. A spotlight shall be intermittently used to illuminate the backdown channel and apex until all live marine mammals are removed from the net.

(3) *Encircling gear, purse seining not involving the intentional taking of marine mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(4) *Stationary gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(5) *Other gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus,* under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vii) The number of Dall porpoise (*Phocoenoides dalli*) killed or seriously injured by Japanese vessels shall be limited to 5,500 animals per year. Any permit issued under this regulation shall indicate the measures by which the permit holder shall comply with the reporting requirements of paragraph (d)(5)(v) of this section. Any incidental take permit issued under this regulation shall allow retention of marine mammals for scientific research purposes and not require a separate permit under paragraph (d)(5)(iv).

(e) *Importation:* (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the FEDERAL REGISTER, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) *Salmon and halibut.* The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

110.20-25	Halibut, fresh or chilled.
110.20-30	Halibut, frozen.
110.20-45	Salmon, fresh or chilled.
110.10-50	Salmon, frozen.
110.70-40	Halibut, other—except portion controlled steaks.
111.48-00	Salmon, salted.
111.88-00	Salmon, smoked or kippered.
112.18-00	Salmon, preserved, not in oil.

(ii) *Yellowfin tuna.* The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

110.10-20	Tuna; yellowfin, whole fish.
110.10-25	Tuna; yellowfin, eviscerated, head on.
110.10-30	Tuna; yellowfin, eviscerated, head off.
110.10-37	Tuna; yellowfin, other.
112.30-40	Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.34-00	Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.90-00	Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) *Salmon and halibut.* All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369-1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

(i) The country of origin; and

(ii) The identity and quantity of fish; and, either

(iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the FEDERAL REGISTER, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) *Yellowfin tuna:* All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation.

(ii) The Yellowfin Tuna Certificate of Origin must include the following information:

(A) Country of origin of the fishing vessel(s) involved;

(B) Exporter (name and address);

(C) Consignee (name and address);

(D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number;

(E) Name of vessel(s) which caught the yellowfin tuna;

(F) Fishing method used (i.e., purse seine, longline, pole and line, etc.),

(G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section;

(H) Must be signed by either a responsible government official of the country whose flag vessel caught the fish or the vessel master, below the following certification statements:

> I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).
>
> I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

> The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the FEDERAL REGISTER that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing operations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (§ 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, the following information:

(A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.;

(B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with § 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed;

(C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures);

(D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations;

(E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and

(F) A list of vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of § 216.24(e)(3) or (e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* That fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551.

When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if:

(i) The required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or

(ii) The required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atomspheric Administration, Department of Commerce, Washington, DC 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entery under § 216.24(e)(3) or (e)(4) or which is redelivered in accordance with § 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided nowever,* That any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers.* (1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed $2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(Approved by the Office of Management and Budget under control numbers 0648-0083 for paragraphs (b) and (c), 0648-0085 for paragraph (d), and 0648-004 for paragraph (e) of this section)

[45 FR 72187, Oct. 31, 1980, as amended at 46 FR 27056, May 15, 1981; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984; 49 FR 46909, Nov. 29, 1984]

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term "ocean" includes bays and estuaries.

(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the Bureau of Sport Fisheries and Wildlife.

(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.

(d) Title to any marine mammal parts collected under this section is not transferable unless consented to, in writing, by the Secretary.

Subpart D—Special Exceptions

§ 216.31 Scientific research permits and public display permits.

(a) The Director may issue permits authorizing the taking and importing of marine mammals for scientific research and public display except that no display permits will be issued for marine mammals from a species listed as depleted under § 216.15 of this part. Any person desiring to obtain such a permit may make application therefore to the Secretary. The sufficiency of the application shall be determined by the Secretary and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether scientific research or a public display permit should be issued by the Secretary of Commerce. The Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will review all completed applications submitted to them by the Secretary pursuant to paragraph (b) of this section (39 FR 1851, January 15, 1974.) An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Assistance may be obtained by writing the Director or calling the Law Enforcement and Marine Mammal Protection Division in Washington, DC (area code 202), phone number 343-

7780. In preparing an application for a scientific research or public display permit, provide the following information:

(1) Title: As applicable, either—

(i) Application for Public Display Permit Under the Marine Mammal Protection Act of 1972, or

(ii) Application for Scientific Research Permit Under the Marine Mammal Protection Act of 1972.

(2) List the date of the application.

(3) If the Applicant is a partnership or a corporate entity set forth the details. If the marine mammal to be taken or imported, or the marine mammal product to be imported, is to be utilized or displayed by a party other than the Applicant, set forth the name of the party and such other information as would be required if such party were an Applicant.

(4) Provide a statement on the purpose of the proposed taking or importing, including a brief description of:

(i) The need for the marine mammal(s) and/or marine mammal product(s); and

(ii) How they will be used.

(5) If the application is for a scientific research permit, provide the following additional information:

(i) A detailed description of the scientific research project or program in which the marine mammal or product thereof is to be used, including the period of time over which the research will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed research has broader significance than the individual researcher's goals (i.e., does the proposed research respond directly or indirectly to recommendations of any national or international scientific body charged with research or management of marine mammals and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continual benefit to science, in a museum or other institutional collection.

(6) Describe any marine mammals to be taken or imported, whether for public display or scientific research or any marine mammal products to be imported, including the following:

(i) A list of each species to be taken or imported and the number of each, including the common and scientific name;

(ii) A physical description of each animal to be taken or imported, including the age, size, and sex;

(iii) A list of the probable dates of capture and importation for each animal and the location of capture and importation, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each marine mammal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture the animals;

(vii) If the capture is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture the animals, should a permit be granted;

(viii) In the case of imported animals, indicate, if known, the management and protection programs of the country from which the animal originates; and

(ix) For any marine mammal products to be imported, provide the information sought in this paragraph for all marine mammals from which component parts of such products are derived.

(7) Describe the manner of transportation of any marine mammal taken or imported, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the research or display facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any mammals sought, including a complete description of the facilities where any such mammals will be maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the wellbeing of the animal.

(9) If the application is for public display, provide a detailed description of the proposed display, including:

(i) A description of the manner, location, and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of the numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated dipslay; and

(v) A description of the Applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(10) If the marine mammal to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969 or any Act superseding it, or has been designated by the Secretary as depleted, or if the marine mammal product to be imported is composed in whole or in part from such mammal, provide a detailed justification of the need for such mammal(s), or product(s) including a discussion of possible alternatives, whether or not under the control of the Applicant. Please note that pursuant to the Act and interim regulations that no public display permits may be issued for such endangered or depleted species.

(11) For the year preceding the date of this application, provide a detailed description of all marine mammal mortalities, including:

(i) A list of all marine mammals captured, transported, maintained, displayed, or utilized for scientific research and/or for all marine mammals caused to be captured, transported, maintained, displayed, or utilized for scientific research, by the Applicant.

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by the Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972.

(13) The applicant must sign the application.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Except as provided in Subpart D of 15 CFR Part 904, permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 39 FR 14348, Apr. 23, 1974; 41 FR 30120, July 22, 1976; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984]

§ 216.32 [Reserved]

§ 216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefore; and

(2) The steps which the Permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice or such other date as may be specified in the notice by the permittee. The time and place for the hearing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the FEDERAL REGISTER within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the FEDERAL REGISTER.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 48 FR 57302, Dec. 29, 1983]

§ 216.34 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

Subpart E—Designated Ports

§ 216.40 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR Part 14.

(b) For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.
Los Angeles, Calif.
New Orleans, La.
Seattle, Wash.
Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

Alaska—Juneau, Anchorage, Fairbanks
Hawaii—Honolulu
Puerto Rico—San Juan
Guam—Honolulu, Hi.
American Samoa—Honolulu, Hi.
Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR Part 14 for importation requirements and information.

Subpart F—[Reserved]

Subpart G—Notice and Hearing on Section 103 Regulations

SOURCE: 40 FR 10183, Mar. 5, 1975, unless otherwise noted.

§ 216.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) 16 U.S.C. 1371(a)(2), 1371(a)(3)(A), 1371(b) (1972)) of the Act and these regulations authorize the Director, National Marine Fisheries Service, to (1) impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Director to section 103 (16 U.S.C. section 1373 (1972)). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A) 1972)).

(b) The purpose of this subpart is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d).

§ 216.71 Definitions.

Definitions shall be the same as in Subpart A of this part except as follows:

(a) "Party" means, for the purposes of this subpart:

(1) The Director or his representative;

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 216.74 and 216.83(b).

(b) "Witness" means, for the purposes of this subpart, any person who submits written direct testimony on the proposed regulations.

A person may be both a party and a witness.

216.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. section 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 216.73 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The place(s) where records and submitted direct testimony will be kept for public inspection;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the prehearing conference.

§ 216.74 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice.

§ 216.75 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 216.73, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

(1) Change the time and place of the hearing and adjourn the hearing:

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Director.

(d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 216.76 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 216.73), the final hearing agenda (§ 216.81), or within 15 days after the conclusion of the prehearing conference (§ 216.83) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 216.77 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, National Marine Fisheries Service, Washington, DC 20235. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 216.78 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, National Marine Fisheries Service, Washington, DC 20235—unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 216.79 Ex parte communications.

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 216.80 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 216.76, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 216.73(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 216.81 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the FEDERAL REGISTER within ten days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 216.82 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Director shall then make a final decision in accordance with these regulations (§ 216.90).

§ 216.83 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 216.73:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 216.74; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 216.76.

§ 216.84 Waiver of right to participate.

Persons who fail to notify the Director pursuant to § 216.74 and § 216.83 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 216.85 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: *Provided*, That if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent notices published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Director if made thereafter.

§ 216.86 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness', if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: *Provided*, That parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 216.87 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Director's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 216.88 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 216.89 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Director shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Director, National Marine Fisheries Service, Washington, DC 20235.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the twenty-day period to the Director at the above address.

§ 216.90 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(c) The Director's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

Subpart H—Transfer of Management Authority to States

NOTE: Regulations governing the transfer of management authority to States pursuant to section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of Commerce are found at Part 403 of this title, see 48 FR 22456, May 18, 1983.

Subpart I—Waiver of the Moratorium on Taking of Marine Mammals

AUTHORITY: Secs. 103 and 109 of the Marine Mannal Protection Act of 1972, as amended (16 U.S.C. 1373 and 1379).

SOURCE: 44 FR 2553, Jan. 11, 1979, unless otherwise noted.

EFFECTIVE DATE NOTE: At 44 FR 2553, Jan. 11, 1979, Subpart I was added to Part 216, effective when the Administrator determines (in accordance with section 109(a)(2) of the Marine Mammal Protection Act of 1972, and 50 CFR Part 216, Subpart H) that Alaskan laws and regulations are consistent with the Act.

§ 216.110 Purpose of regulations.

Pursuant to section 103 of the Act, the regulations contained in this subpart insure that the taking of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disadvantage of any species or population stock.

§ 216.111 Scope.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Administrator has made a decision to effect a waiver and allow taking such species or population stocks pursuant to section 101(a)(3)(A) of the Act; and (2) a State has adopted and submitted to the Administrator laws and regulations relating to the protection and taking of such species and population stocks and the Administrator has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and Subpart H of this part.

(b) The provisions of this subpart, unless specifically stated otherwise, apply to all taking of marine mammals by U.S. citizens and residents in Alaska and the waters off Alaska.

(c) The provisions of this subpart do not apply to nonlethal scientific research or public display, which shall be permitted in accordance with § 216.31, and incidental taking by foreign persons or foreign vessels, which shall be permitted in accordance with § 216.24.

§ 216.112 Definitions.

For purposes of this part:

(a) "Alaska" means all lands and waters within the seaward boundary of the State of Alaska;

(b) "Foreign person" means any person who is not a U.S. citizen or resident; "foreign vessel" means any vessel other than a vessel documented or certificated under U.S. laws.

(c) "Lethal scientific research" means scientific research in which the subject mammal is killed or seriously injured.

(d) "Pup" refers to a marine mammal which is born in the year in which it is taken in a commercial harvest.

(e) The term "Waters off Alaska" means waters outside Alaska and west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 216.113 Taking of seals, sea lions and Beluga Whales (Alaska).

(a) Pursuant to section 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium and other requirements of section 101(a) of the Act are waived to allow the kinds of taking described in § 216.111(b) up to the following amounts on an annual, calendar year basis effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to § 216.104(d).

Species	Annual taking limit on mortality and serious injury
Northern (Steller), Sea Lion (*Eumetopias jubatus*)	[1] 6,648
Harbor Seal (*Phoca vitulina*)	[1] 10,511
Largha Seal (*Phoca largha*)	5,700
Ribbon Seal (*Histriophoca vasciata*)	500
Ringed Seal (*Pusa hispida*)	20,000
Pacific Bearded Seal (*Erignatha barbatus*)	[2] 9,000
Beluga Whale (*Delphinapterus leucas*)	10
Cook Inlet stock, Bering-Chukchi Sea stock	350

[1] Two (2) pups may be taken in lieu of one adult, but only in commercial harvests and in accordance with age restrictions established by the State of Alaska. In accordance with 50 CFR 216.112(d), the State can allow only animals born in the year in which they are taken to qualify as pups.

[2] To be measured by the landing and taking ashore of 3,000 animals.

(b) The State of Alaska must insure that for each species and population stock, no more than the number of animals set forth in paragraph (a) of this section are taken annually.

(c) All takings of marine mammals allowed by § 216.111(b) and § 216.113(a) and all related activities shall be conducted in accordance with the applicable laws and regulations of the State of Alaska and the United States.

(d) The takings of marine mammals allowed by §§ 216.111(b) and 216.113(a) shall be duly licensed or otherwise authorized in writing as follows.

(1) *Alaska citizens and residents (including resident aliens).* All subsistence, direct, incidental, and lethal scientific research taking in Alaska and the waters of Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska;

(2) *Non-Alaskan-U.S. citizens, residents, and resident aliens.* (i) All direct and incidental taking, and lethal scientific research in Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska; (ii) if such takings occur in the waters off Alaska, they shall be permitted in accordance with the laws and regulations of the United States.

(3) With respect to all permit applications for taking in the waters off Alaska under paragraph (d)(2)(ii) of this section, the Assistant Administrator for Fisheries, NOAA, shall consult with appropriate officials of the State of Alaska prior to issuing any permits.

(4) The State of Alaska shall consult with the Assistant Administrator for Fisheries, NOAA, prior to issuing any lethal scientific research permits under paragraphs (d)(1) and (d)(2) of this section.

(e) Whenever the taking of any species or population stock during any calendar year reaches, or is likely to reach 90 percent of the annual taking limit under paragraph (a) of this section, the Administrator shall be notified pursuant to § 216.107. After notification, the State of Alaska must take appropriate steps to insure that the annual waiver limit is not exceeded, including, if necessary, an immediate termination of any taking under its control. If the State of Alaska does not take such appropriate steps, the Administrator as he deems appropriate, by notice to the State of Alaska and publication in the FEDERAL REGISTER, shall suspend and terminate any takings authorized by the State of Alaska for the calendar year in question.

(f) Whenever any species or population stock diminishes or is likely to diminish below its optimum sustainable population, or if the State of Alaska does not preserve the purposes and policies of the Act, or maintain optimum sustainable population and a healthy ecosystem, the Administrator shall by notice to the State of Alaska and publication in the FEDERAL REGISTER reimpose the moratorium on the taking of such affected species or population stock provided by section 101(a) of the Act.

(g) No marine mammal or product thereof taken under this section may be removed from Alaska or the waters off Alaska unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product or container until the final stages of processing.

(h) For those persons or vessels subject to Alaskan jurisdiction, any violation of the laws and regulation of the State of Alaska applicable to the taking of marine mammals, committed in the waters off Alaska, shall be a violation of 50 CFR Part 216, Subpart I. For those persons or vessels not subject to the jurisdiction of the State, any violation of these regulations in Alaska and the waters off Alaska may be punished in accordance with the procedures and penalties of sections 105, 106, and 107 of the Act and the regulations in this part.

(i) In accordance with paragraph (d)(2)(ii) of this section, the Administrator, after consultation with the State of Alaska, may issue permits to non-Alaskan, U.S. citizens authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

(1) Name and address of applicant;

(2) Month and year of taking;

(3) Identity of the marine mammal and the quantity to be taken;

(4) Proposed location of taking;

(5) Method of taking;

(6) Proposed disposition of parts and products and method of shipment;

(7) The following certification:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefits of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

and

(8) Signature of the applicant;

(j) Permits applied for under paragraph (i) of this section shall be terminated by reimposition of the moratorium or any closure of a season by the State of Alaska.

(k) Permits issued under paragraph (i) of this section shall contain such terms and conditions as the Administrator may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations, and with the applicable provisions of Alaska's approved laws and regulations and shall include:

(1) The number of animals which are authorized to be taken;

(2) The location from which they may be taken;

(3) The method of taking;

(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;

(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and

(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. In no event will the cost be less than the fee for the comparable non-resident license or permit issued by the State of Alaska.

PART 217—GENERAL PROVISIONS

Subpart A—Introduction

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217.1 Purpose of regulations.
217.2 Scope of regulations.
217.3 Other applicable laws.
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Subpart B—Definitions

217.12 Definitions.

Subpart C—Addresses

217.21 Assistant Administrator.
217.22 Office of Marine Mammals and Endangered Species.
217.23 Enforcement Division.

Authority: 16 U.S.C. 1521-1543; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

Source: 39 FR 41370, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 217.1 Purpose of regulations.

The regulations of Parts 217 through 222 are promulgated to implement the following statutes enforced by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife.

(Endangered Species Act of 1973, section 11(f), 87 Stat. 884, Pub. L. 93-205; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-1)

§ 217.2 Scope of regulations.

The various provisions of Parts 217 through 222 of this chapter are interrelated, and particular note should be taken that the parts must be construed with reference to each other. The regulations in Parts 217 through 222 apply only for fish or wildlife under the jurisdictional responsibilities of the Secretary of Commerce for the purpose of carrying out the Endangered Species Act of 1973 (see Part 222, § 222.23(a)). Endangered species of fish or wildlife other than those covered by these regulations are under the jurisdiction of the Secretary of the Interior. For rules and procedures relating to such species, see 50 CFR Parts 10 through 17.

§ 217.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in Parts 217 through 222 of this chapter. In addition, nothing in Parts 217 through 222 of this chapter, nor any permit issued under Parts 217 through 228 of this chapter, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other National Marine Fisheries Service enforced statutes or regulations.

§ 217.4 When regulations apply.

The regulations of Parts 217 through 222 of this chapter shall apply to all matters, including the processing of permits, arising after the effective date of such regulations, with the following exception:

(a) *Civil penalty proceedings.* Except as otherwise provided in § 218.25, the civil penalty assessment procedures contained in Parts 217 through 222 of this chapter shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

Subpart B—Definitions

§ 217.12 Definitions.

"Act" means the Endangered Species Act of 1973, as amended (Pub. L. 93-205).

"Assistant Administrator" means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized representative.

"Commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

"Country of exportation" means the last country from which the animal was exported before importation into the United States.

"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.

"Fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

"Foreign commerce" includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

"Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

"Permit" or *"Certificate of exemption"* means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any permit or certificate of exemption.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

"Possession" means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

"Pre-Act endangered species part" means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973 in the course of a commercial activity; or any finished scrimshaw product, if

such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"*Scrimshaw product*" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving or carving.

"*Secretary*" means the Secretary of Commerce or his authorized representative.

"*State*" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"*Take*" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

"*Transportation*" means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

"*United States*" means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"*Whoever*" means the same as person.

"*Wildlife*" means the same as fish or wildlife.

(Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540))

[45 FR 57132, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

Subpart C—Addresses

AUTHORITY: Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540).

SOURCE: 45 FR 57133, Aug. 27, 1980, unless otherwise noted.

§ 217.21 Assistant Administrator.

Mail forwarded to the Assistant Administrator for Fisheries should be addressed:

Assistant Administrator for Fisheries, F
National Marine Fisheries Service
Washington, DC 20235

§ 217.22 Office of Marine Mammals and Endangered Species.

Mail in regard to permits should be addressed to:

Office of Marine Mammals and Endangered Species, F/MM
National Marine Fisheries Service
Washington, DC 20235

§ 217.23 Enforcement Division.

Mail in regard to enforcement and certificates of exemption should be addressed to:

Enforcement Division, F/CM5
National Marine Fisheries Service
Washington, DC 20235

PART 219—SEIZURE, FORFEITURE, AND DISPOSAL PROCEDURES

Subpart A—Introduction

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219.1 Purpose of regulations.
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219.31 Record-keeping.

AUTHORITY: Black Bass Act, 16 U.S.C. 851-856; Marine Mammal Protection Act of

1972, 16 U.S.C. 1361-1407; Endangered Species Act of 1973, 16 U.S.C. 1531-1543; Lacey Act, 18 U.S.C. 42-44, 3054, 3112; Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 742l(c); Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g; Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882; Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f; Sponge Act, 16 U.S.C. 781-785; Tuna Conventions Act of 1950, 16 U.S.C. 951-961; Whaling Convention Act of 1949, 16 U.S.C. 916-916l; Fur Seal Act of 1966, 16 U.S.C. 1151-1187; Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434.

SOURCE: 46 FR 31648, June 17, 1981, unless otherwise noted.

Subpart A—Introduction

§ 219.1 Purpose of regulations.

The regulations in this part provide rules and procedures for the seizure, holding, bonding, abandonment, and forfeiture of wildlife and other property, which under certain laws enforced by the National Marine Fisheries Service are subject to seizure and forfeiture.

§ 219.2 Scope of regulations.

The regulations in this part apply to fish, wildlife, or any other items (referred to as "items" hereinafter) which have been forfeited or abandoned to the United States under the following laws and regulations issued thereunder:

(a) Endangered Species Act of 1973, 16 U.S.C. 1531-1543;

(b) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1407;

(c) Black Bass Act, 16 U.S.C. 851-856;

(d) Lacey Act, 16 U.S.C. 42-44, 3054, 3112;

(e) Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882;

(f) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971g;

(g) Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j;

(h) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021-1032;

(i) Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f;

(j) Sponge Act, 16 U.S.C. 781-785;

(k) Tuna Conventions Act of 1950, 16 U.S.C. 951-961;

(l) Whaling Convention Act of 1949, 16 U.S.C. 916-916l;

(m) Fur Seal Act of 1966, 16 U.S.C. 1151-1187;

(n) Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434.

The regulations in this part are in addition to, and not in contradiction of, any special rules which may provide for the sale of fish and perishable items seized under various of these laws.

Subpart B—[Reserved]

Subpart C—Disposal of Forfeited or Abandoned Items

§ 219.20 Delivery to Administrator.

Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, or the abandonment or waiver of any claim to any such property, it shall be delivered to the Administrator, or his or her designee, for storage or disposal according to the provisions of this subpart.

§ 219.21 Definitions.

For the purpose of this Subpart C:

(a) "Abandon" means an owner's surrender of a seized item to NOAA by, but not limited to, expressly waiving any claim to the item, refusing or otherwise avoiding delivery of mail concerning the seizure (as by giving a false name or address), or failing for more than 180 days to make or maintain a claim to the item. An item will be declared finally abandoned, without recourse, upon a finding of abandonment, as defined here.

(b) "Disposal" includes, but is not limited to, loan, gift, sale or destruction of an item, except that no marine mammal or endangered species item may be sold.

(c) "Forfeiture" includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the NOAA Administrator (or designee) under a statute.

(d) "Waiver of any claim" includes, but is not limited to, failing to respond within 120 days of issuance of a Government Notice concerning the seizure; or voluntarily relinquishing any interest in an item by written agreement, or otherwise. An item will be declared finally abandoned, without recourse, upon a finding of waiver, as defined here.

§ 219.22 Purposes of disposal.

Disposal procedures may be used to alleviate overcrowding of evidence storage facilities, and to avoid the accumulation of seized items where disposal is not otherwise accomplished by court order, as well as to address the needs of governmental agencies and other institutions and organizations for such items for scientific, educational, and public display purposes. In no case shall items be used for personal purposes, either by loan recipients or government personnel.

§ 219.23 Disposal of evidence.

Items that are evidence shall be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable items may be authorized for disposal sooner.

§ 219.24 Loans to institutions.

Items approved for disposal may be loaned to institutions or organizations requesting such items for scientific, educational, or public display purposes. Items will be loaned only after execution of a loan agreement which provides, among other things, that the loaned items will be used only for noncommercial scientific, educational, or public display purposes, and that they will remain the property of the United States government, which may demand their return at any time. Parties requesting the loan of an item must demonstrate the ability to provide adequate care and security for the item. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

§ 219.25 Loans to individuals.

Items generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the items will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

§ 219.26 Selection of loan recipients.

Recipients of items will be chosen so as to assure a wide distribution of the items throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any item offered for disposal. The Administrator, or his or her designee, may solicit applications, by publication of a notice in the FEDERAL REGISTER, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific items for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

§ 219.27 Loan agreement.

Items will be transferred pursuant to a loan agreement executed by the Administrator, or his or her designee, and the borrower. Any attempt on the part of the borrower to retransfer an item, even to another institution for related purposes, will violate and invalidate the loan agreement, and entitle the United States to immediate repossession of the item, unless the prior approval of the Administrator, or his or her designee, has been obtained pursuant to § 219.28. Violation of the loan agreement may also subject the violator to the penalties provided by the laws governing possession and transfer of the item.

§ 219.28 Temporary reloans; documents to accompany items.

Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator, or his or her disignee, is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator or his or her designee. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the item whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

§ 219.29 Destruction of items.

This paragraph and other provisions relating to the destruction of property apply to items—

(a) Which have not been handicrafted, or

(b) Which have been handicrafted and are of less than one hundred dollars ($100) value, and

(c) For which no acceptable applications have been received, or for which publication in the FEDERAL REGISTER of the availability of similar items in the past has resulted in the receipt of no applications.

Such items may be destroyed if they have been in government ownership for more than one year. Perishable items which are not fit for human consumption may be destroyed sooner, if the authorization required by § 219.23 has been obtained. Destruction of items shall be witnessed by two persons, one of whom may be the disposing officer.

§ 219.30 Food items.

Food items shall, if possible, be disposed of by gift to nonprofit groups providing public welfare food services.

§ 219.31 Record-keeping.

A "fish and wildlife disposal" form shall be completed each time an item is disposed of pursuant to the policy and procedure established herein, and shall be retained in the case file for the item. These forms shall be available to the public.

PART 220—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

Sec.

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Subpart E—Permits Involving Endangered or Threatened Sea Turtles

220.50 Purpose.
220.51 Permit applications.
220.52 Issuance of permits.
220.53 Other requirements.

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205; act of August 31, 1951, Ch. 376. Title 5, sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

SOURCE: 39 FR 41373, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 220.1 General.

Each person intending to engage in an activity for which a permit is required by Parts 217 through 222 of this chapter or the Endangered Species Act of 1973 shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by Parts 217 through 222 of this chapter must make application for such permit in accordance with the requirements of this Part 220 of this chapter and the other regulations in Parts 217 through 222 of this chapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of Parts 217 through 222 of this chapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

§ 220.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to Parts 217 through 222 of this chapter.

§ 220.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of Parts 217 through 222 of this chapter and apply to all permits issued thereunder, including "Endangered Fish or Wildlife" (Part 222).

§ 220.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of Parts 217 through 222 of this chapter, and will not be unlawful.

Subpart B—Application for Permits

§ 220.11 Procedure for obtaining a permit.

The following general procedures apply to applications for permits:

(a) *Forms.* Applications must be submitted by letter containing all necessary information, attachments, certification, and signature. In no case will oral or telephone applications be accepted.

(b) *Forwarding instructions.* Applications must be submitted to the Director, National Marine Fisheries Service. The address is listed in § 217.21.

(c) *Time requirement.* Applications must be received by the appropriate official of the National Marine Fisheries Service at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective. The National Marine Fisheries Service will, in all cases, attempt to process applications deemed sufficient in the shortest possible time. The National Marine Fisheries Service does not, however, guarantee 90 days issuance after publication in the FEDERAL REGISTER of receipt of a permit application and some permits cannot be issued within that time period.

§ 220.12 [Reserved]

§ 220.13 Abandoned application.

Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

Subpart C—Permit Administration

§ 220.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 220.4 is inserted into the official file of the National Marine Fisheries Service. Any representation of an employee or agent of the United States Government shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 217.12.

(b) The Director shall issue the appropriate permit unless—

(1) Denial of a permit has been made pursuant to Subpart D of 15 CFR Part 904;

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any permit request, and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application. The final action by the Director shall be considered the final administrative decision of the Department.

[39 FR 41373, Nov. 27, 1974, as amended at 49 FR 1042, Jan. 6, 1984]

§ 220.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in Parts 217 through 222 of this chapter for the period stated on the permit, unless sooner modified, suspended, or revoked pursuant to Subpart D of 15 CFR Part 904.

[49 FR 1042, Jan. 6, 1984]

§ 220.23 [Reserved]

§ 220.24 Renewal of permit.

Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise notified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon.

§ 220.25 Permits not transferable; agents.

(a) Permits issued under Parts 220 through 222 are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 220.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 220.26 Right of succession by certain persons.

(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 220.27 Change of mailing address.

During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained.

§ 220.28 Change in name.

A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree: *Provided,* That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

§§ 220.29—220.30 [Reserved]

§ 220.31 Discontinuance of activity.

When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

Subpart D—Conditions

§ 220.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

§ 220.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

§ 220.44 Display of permit.

Any permit issued under Parts 220 through 222 shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 220.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of Parts 217 through 222 of this chapter or the provisions of the permit set forth other reporting requirements

§ 220.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

§ 220.47 Inspection requirement.

Any person holding a permit under Parts 217 through 222 of this chapter shall allow the Director's agent to enter his premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of Parts 217 through 222 of this chapter or by the Endangered Species Act of 1973.

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

Source: 43 FR 32809, July 28, 1978, unless otherwise noted.

§ 220.50 Purpose.

This subpart establishes procedures for issuance of permits for scientific purposes or to enhance the propagation or survival of "endangered" or "threatened" sea turtles and zoological exhibition or educational purposes for "threatened" sea turtles.

§ 220.51 Permit applications.

Applications for permits to take, import, export or engage in any other prohibited activity involving any species of sea turtle listed in 50 CFR 17.11 shall be submitted to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either, 50 CFR 17.22(a) (Endangered Species) or 50 CFR 17.32(a) (Threatened Species) as appropriate. Applications involving activities under the jurisdiction of the National Marine Fisheries Service (NMFS) as defined in 50 CFR 222.23(a) and 50 CFR 227.4 shall be forwarded by the WPO to NMFS.

§ 220.52 Issuance of permits.

(a) Applications under the jurisdiction of the WPO shall be reviewed and acted upon in accordance with 50 CFR 17.22 or 50 CFR 17.32 as appropriate.

(b) NMFS shall make a complete review of applications forwarded to it by the WPO in accordance with § 220.51 and determine the appropriate action to be taken in accordance with 50 CFR 220.21(b) and 222.23(c). In instances where the application involves activities solely within NMFS jurisdiction, NMFS shall issue permits or letters of denial and provide WPO with copies of its actions.

(c) Where a permit application involves activities under both NMFS and FWS jurisdiction, each agency will process the application for activities under its jurisdiction. WPO will issue either a permit or a letter of denial.

(d) Where a permit application for activities under NMFS jurisdiction also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249, July 1, 1975) (CITES) (50 CFR Part 23), NMFS will process the application for activities under its jurisdiction. WPO will issue the final document by means of a combination ESA/CITES permit or a letter of denial.

§ 220.53 Other requirements.

Permits issued by NMFS under this Subpart shall be administered and comply with the provisions of 50 CFR Parts 217 through 227 as appropriate.

PART 221—DESIGNATED PORTS

§ 221.1 Importation and exportation at designated ports.

Any fish or wildlife (other than shellfish and fishery products which (a) are not endangered or not threatened species, and (b) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for other reasons if he deems it appropriate and consistent with the purpose of facilitating enforcement of the Endangered Species Act and reducing the costs thereof. Importers and exporters are advised to

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see 50 CFR Part 14 for importation and exportation requirements and information.

(Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205)

[39 FR 41375, Nov. 27, 1974]

PART 222—ENDANGERED FISH OR WILDLIFE

Subpart A—Introduction

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222.2 Scope of regulations.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

222.11-1 General certificate of exemption requirements.
222.11-2 Application renewal procedure.
222.11-3 Application renewal requirements.
222.11-4 Procedures for issuance of renewals of certificates of exemption.
222.11-5 Application for modification of certificate of exemption by holder.
222.11-6 Amendment of certificates of exemption.
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222.11-8 Purchaser provisions.
222.11-9 Duration of certificate of exemption.
222.12 Locations covered by certificate of exemption.
222.12-1 Certificate of exemption not transferable; exception.
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222.13 Exportation.
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222.13-4 Burden of proof; presumption.

Subpart C—Endangered Fish or Wildlife Permits

222.21 General permit requirement.
222.22 [Reserved]
222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.
222.24 Procedures for issuance of permits.
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222.25 Applications for modification of permit by permittee.
222.26 Amendment of permits by NMFS.
222.27 Procedures for suspension, revocation, or modification of certificates of exemption.
222.28 Possession of permits.

AUTHORITY: 16 U.S.C. 1531-1543.

Subpart A—Introduction

§ 222.1 Purpose of regulations.

The regulations contained in this part identify the species or subspecies of fish or wildlife determined to be endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973, and presently deemed endangered species under the Endangered Species Act of 1973, which are under the jurisdiction of the Secretary of Commerce, and establish procedures and criteria for issuance of permits for the taking, importation, exportation, or otherwise prohibited acts, involving endangered fish or wildlife. The regulations of this part implement, in part, the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205, as amended.

[45 FR 57133, Aug. 27, 1980]

§ 222.2 Scope of regulations.

(a) The regulations of this part apply only to endangered fish or wildlife.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of Parts 217 through 222 of this chapter which may require a permit or prescribe additional restrictions or conditions for the taking, importation, exportation, and interstate transportation of fish or wildlife. (See also Parts 220 and 221 of this chapter.)

[45 FR 57133, Aug. 27, 1980]

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

SOURCE: 45 FR 57134, Aug. 27, 1980, unless otherwise noted.

§ 222.11-1 General certificate of exemption requirements.

(a) The Assistant Administrator, pursuant to the provisions of the Endangered Species Act, and pursuant to the provisions of this paragraph, may exempt any pre-Act endangered species part from one or more of the following:

(1) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(2) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(3) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

(b) No person shall engage in any of the above activities involving any pre-Act endangered species part without a valid certificate of exemption, or evidence of a right thereunder, issued pursuant to this Subpart B.

(c) After January 31, 1984, no person may export; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid certificate of exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

§ 222.11-2 Application renewal procedure.

(a) Any person to whom a certificate of exemption has been issued by the National Marine Fisheries Service and who desires to obtain a renewal of such certificate of exemption may make application therefor to the Assistant Administrator. The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration for further information deemed necessary.

(b) One copy of a completed application for renewal shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(c) The outside of the envelope should be marked, ATTENTION: Enforcement Division, "Certificate of Exemption Request." Assistance may be obtained by writing or calling the Enforcement Division, NMFS, in Washington, DC (AC 202, 634-7265). At least 15 days should be allowed for processing. An application for a certificate of exemption shall provide the information contained in § 222.11-3 (when the information requested is not applicable, put "N.A.") and such other information that the Assistant Administrator may require.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 48 FR 57302, Dec. 29, 1983]

§ 222.11-3 Application renewal requirements.

(a) The following information will be used as the basis for determining whether an application for renewal of a certificate of exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption Under Pub. L. 97-304.

(2) The date of application.

(3) The identity of the applicant including complete name, original certificate of exemption number, current address, and telephone number, including zip and area codes. If the applicant is a corporation, partnership, or association set forth the details.

(4) The period of time for which a renewal of the certificate of exemption is requested; however, no renewal of certificate of exemption, or right claimed thereunder, shall be effective after the close of the three-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: a unique serial number; the weight of the item in grams, to the nearest whole gram; and a description in detail sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. Provided that, the number must remain affixed to the item until it is sold to an ultimate user, as defined in § 222.11-8(b) of this part.

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a certificate of exemption.

(6) A certification in the following language:

> I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my certificate of exemption under the Endangered Species Act of 1973, as amended by Pub. L. 94-359, 90 Stat. 911, Pub. L. 96-159, 93 Stat. 1225, Pub. L. 97-304, 95 Stat. 715, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Endangered Species Act of 1973.

(7) Signature of the applicant.

(b) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified by Certified Mail of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered as having been abandoned.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12808, Apr. 1, 1985]

§ 222.11-4 Procedures for issuance of renewals of certificates of exemption.

Whenever application for a renewal of a certificate of exemption is received by the Assistant Administrator which the Assistant Administrator deems sufficient, he shall, as soon as practicable, issue a certificate of renewal to the applicant.

§ 222.11-5 Application for modification of certificate of exemption by holder.

Where circumstances have changed so that an applicant or certificate of exemption holder desires to have any material term or condition of his application or certificate modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part.

§ 222.11-6 Amendment of certificates of exemption.

All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a certificate of exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

§ 222.11-7 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217 through 222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

[49 FR 1042, Jan. 6, 1984]

§ 222.11-8 Purchaser provisions.

(a) Any person granted a certificate of exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold, and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(b) Any purchaser of pre-Act endangered species parts included in a valid certificate of exemption, unless an ultimate user, must within 30 days after the receipt of such parts submit a written report to the address given in the certificate specifying the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. An ultimate user, for purposes of this paragraph, means any person who acquired such endangered species part or product for his own consumption or personal use (including as gifts), and not for resale.

(c) After January 31, 1984, no purchaser may export; deliver, receive, carry or transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered species part or product even though such part or product was acquired under a certificate of exemption either prior to or subsequent to that date.

(Approved by the Office of Management and Budget under control number 0648-0079)

[50 FR 12808, Apr. 1, 1985]

§ 222.11-9 Duration of certificate of exemption.

A certificate of exemption is valid only if renewed in accordance with the procedures set forth in § 222.11-3 of this part. All certificates so renewed will be valid for a period beginning April 1, 1985, and ending no later than March 31, 1988. A renewed certificate of exemption entitles the holder to engage in the business or activity specified in the certificate of exemption, within the limitations of the Act and the regulations contained in this subpart, for the period stated in the certificate of exemption, unless sooner terminated.

[50 FR 12808, Apr. 1, 1985, as amended at 50 FR 25713, June 21, 1985]

§ 222.12 Locations covered by certificate of exemption.

The certificate of exemption covers the business or activity specified in the certificate of exemption at the address described therein. No certificate of exemption is required to cover a separate warehouse facility used by the certificate of exemption holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the certificate of exemption which is served by the warehouse or storage facility.

[50 FR 12809, Apr. 1, 1985]

§ 222.12-1 Certificate of exemption not transferable; exception.

Certificates of exemption issued under this subpart are not transferable: *Provided*, That in the event of the lease, sale or other transfer of the operations or activity authorized by the certificate of exemption the successor is not required by this subpart to obtain a new certificate of exemption

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prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.11-8.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-2 Change of address.

A certificate of exemption holder may during the term of the certificate of exemption move his business or activity to a new location at which he intends regularly to carry on such business or activity, without obtaining a new certificate of exemption. However, in every case, notification of the new location of the business or activity must be given in writing within 10 days of such move to the Assistant Administrator. In each instance, the certificate of exemption must be endorsed by the Assistant Administrator. After endorsement of the certificate of exemption the Assistant Administrator will provide an amended certificate of exemption to the person to whom issued.

§ 222.12-3 Certain continuance of business.

A certificate of exemption holder who requests that his certificate of exemption be amended by the Assistant Administrator for corrections or endorsement in compliance with the provisions contained in this subpart, may continue his operations while awaiting action by the Assistant Administrator.

§ 222.12-4 Change in trade name.

A certificate holder continuing to conduct business at the location shown on his certificate of exemption is not required to obtain a new certificate of exemption by reason of a change in trade name under which he conducts his business: *Provided,* That such certificate of exemption holder requests in writing that his certificate of exemption be endorsed to reflect such change of name to the Assistant Administrator within 30 days from the date the certificate of exemption holder begins his business under the new name.

§ 222.12-5 State or other law.

A certificate of exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under any Federal laws or regulations of any other Federal Agency.

§ 222.12-6 Right of entry and examination.

Any person authorized to enforce the Act may enter during business hours the premises, including places of storage, of any holder of a certificate of exemption or of any purchaser for the purpose of inspecting or examining any records or documents required to be kept by such certificate of exemption holder or successor under this subpart, and any endangered species parts at such premises of location.

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-7 Records.

The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form, and shall be retained at the address shown on the certificate of exemption, or at the principal address of a purchaser in the manner prescribed by this subpart.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 48 FR 57302, Dec. 29, 1983; 50 FR 12809, Apr. 1, 1985]

§ 222.12-8 Record of receipt and disposition.

(a) Holders of certificates of exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, must similarly maintain records of all such parts or products they receive.

(b) Such records as referred to in paragraph (a) of this section may consist of invoices or other commercial records which must be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records must (1) show the name and address of the purchaser, seller, or other transferor; (2) show the type, quantity, and identity of the part or product; (3) show the date of such sale or transfer; and (4) be retained, in accordance with the requirements of this subpart, for a period of not less than three years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a certificate of exemption.

(c) (1) Each certificate of exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (b) on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

(2) Quarterly reports are due on January 15, April 15, July 15, and October 15. The first report is due on October 15, 1985.

(d) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (b) of this section when it is shown by the record holder that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

(Approved by the Office of Management and Budget under control number 0648-0078)

[45 FR 57134, Aug. 27, 1980, as amended at 50 FR 12809, Apr. 1, 1985]

§ 222.12-9 Importation.

No pre-Act endangered species part shall be imported into the United States, and a certificate of exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

§ 222.13 Exportation.

(a) Any person desiring to export from the United States any pre-Act endangered species part or scrimshaw product, must possess a valid certificate of exemption issued in accordance with the provisions of this subpart.

(b) In addition to other information, which may be required by this subpart, the exporter will notify the Assistant Administrator by letter which shall show the name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. Such information should reach the Assistant Administrator not less than 10 days prior to shipment.

(c) No pre-Act endangered species part or scrimshaw product which is to be exported from the United States under a certificate of exemption issued therefor, shall be exported except at a port or ports designated by the Secretary of the Interior. The Secretary of the Interior may permit the exportation at non-designated ports for any reason if he deems it appropriate and consistent with the purposes of the Endangered Species Act, as amended, or it will facilitate the administration or enforcement of the Act and reducing the costs thereof. Exporters are advised to see 50 CFR Part 14 for a listing of the designated ports.

§ 222.13-1 Procedure by exporter.

Shipment may not be made until the requirements of § 222.13 are met by the exporter. A copy of the certificate of exemption, and any endorsements thereto, must be sent by the exporter to the District Director of Customs at the port of exportation, and must precede or accompany the shipment in order to permit appropriate inspection prior to lading.

§ 222.13-2 Action by Customs.

Upon receipt of a certificate of exemption authorizing the exportation of pre-Act endangered species parts or scrimshaw products, the District Director of Customs may order such inspection as deemed necessary prior to lading of the merchandise. If satisfied that the shipment is proper and agrees with the information contained in the

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certificate, and any endorsement thereto, the District Director of Customs will clear the merchandise for export. The certificate, and any endorsements, will be forwarded to the Chief, Enforcement Division, F/CM5 National Marine Fisheries Service, Washington, DC 20235.

§ 222.13-3 Transportation to effect exportation.

Notwithstanding any provision of this subpart, it shall not be required that authorization be obtained from the Assistant Administrator for the transportation in interstate or foreign commerce of pre-Act endangered species parts to effect an exportation of such parts authorized under the provisions of this subpart.

§ 222.13-4 Burden of proof; presumption.

Any person claiming the benefit of any exemption or certificate of exemption under the Act or regulations, shall have the burden of proving that the exemption or certificate is applicable, has been granted, and was valid and in force at the time of the alleged violation.

Subpart C—Endangered Fish or Wildlife Permits

SOURCE: 39 FR 41375, Nov. 27, 1974, unless otherwise noted.

§ 222.21 General permit requirement.

No person shall take, import, export, or engage in any other prohibited activity involving, any species or subspecies of fish or wildlife which the Secretary has determined to be endangered under the Endangered Species Act of 1973, as evidenced by its inclusion on the list of endangered fish or wildlife (see 50 CFR Chapter I, Part 17) or which the Secretary of the Interior determined to be endangered under the Endangered Species Conservation Act of 1969 and which are now under the jurisdictional responsibilities of the Secretary of Commerce, without a valid permit issued pursuant to this part.

(Pub. L. 94-359)

[41 FR 36028, Aug. 26, 1976]

§ 222.22 [Reserved]

§ 222.23 Permits for scientific purposes or to enhance the propagation or survival of the affected endangered species.

(a) The Director, National Marine Fisheries Service, may issue permits for scientific purposes or to enhance the propagation or survival of the affected endangered species which authorize, under such terms and conditions as he may prescribe, taking, importation, or certain other acts with respect to endangered species otherwise prohibited by section 9 of the Endangered Species Act of 1973. The species listed as endangered under either the Endangered Species Conservation Act of 1969 or the Endangered Species Act of 1973 and currently under the jurisdiction of the Secretary of Commerce are: Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*) Gray whale (*Eschrichtius robustus (glaucus, gibbosus)*), Blue whale (*Balaenoptera musculus*), Humpback whale (*Megaptera novaeangliae*), Bowhead whale (*Balaenamysticetus*), Right whales (*Eubalaena* spp.), Fin or finback whale (*Balaenoptera physalus*), Sei whale (*Balaenoptera borealis*), Sperm whale (*Physeter catodon*); Cochito (*Phocoena Sinus*); Caribean monk seal (*Monachus tropicalis*) Hawaiian monk seal (*Monachus schauinslandi*); Mediterranean monk seal (*Monachus monachus*); Leatherback sea turtle (*Dermochelys coriacea*), Pacific hawksbill sea turtle (*Eretmochelys imbricata bissa*), Atlantic hawksbill sea turtle (*Eretmochelys imbricata imbricata*), Atlantic ridley sea turtle (*Lepidochelys kempii*), Green sea turtle (*Chelonia mydas*) breeding colony populations in Florida and on the Pacific coast of Mexico, and the olive ridley sea turtle (*Lepidochelys olivacea*) breeding colony population on the Pacific coast of Mexico. Of these, the National Marine Fisheries Service has sole agency jurisdiction for sea turtles while the turtles are in the water and the U.S. Fish and Wildlife Service has jurisdiction for sea turtles while the turtles are on land. Within the jurisdiction of a State, more restrictive State laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable State laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Director except for permits involving sea turtles in which case the applicant shall follow the procedures set out in 50 CFR Part 220 Subpart E. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species should be issued by the Director. An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, Washington, D.C. 20235. Assistance may be obtained by writing the Director or calling the Marine Mammal and Endangered Species Division in Washington, DC (202-343-9445 and effective December 2, 1974, it will become 202-634-7529). At least 45 days should be allowed for processing. An application for a permit shall provide the following information (when the information requested is not applicable put "N.A.") and such other information that the Director may require:

(1) Title: As applicable, either:

(i) Application for Permit for Scientific Purposes under the Endangered Species Act of 1973; or

(ii) Application for Permit to Enhance the Propagation or Survival of the Endangered Species Under the Endangered Species Act of 1973.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity set forth the details. If the endangered species is to be utilized by a person other than the Applicant, set forth the name of that person and such other information as would be required if such person were an Applicant.

(4) A description of the purpose of the proposed acts, including:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals (i.e., does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species, and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continued benefit to science, in a museum or other institutional collection.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name; the subspecies (if applicable); population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit, for each animal, and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals;

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise taken the animals, should a permit be granted;

(7) A description of the manner of transportation of any live animal taken, imported, exported, or shipped in interstate commerce, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable about the species (or related species) or group which is the subject of the application, or from a recognized expert on the species (or related species) or group covered in the application that he has personally reviewed the amendments for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph (b)(8)(vi) requirements of this section;

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of this application, provide a detailed description of all mortalities involving species which were under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and species related to the species which is the subject of this application; captured, transported, maintained, or utilized by the applicant for scientific purposes or to enhance the propagation or survival of the affected species, and/or for all such species caused to be captured, transported, maintained, or utilized for scientific purposes or to enhance the propagation or survival of the affected species, by the Applicant;

(ii) The numbers of mortalities among such animals by species, by date, location of capture, i.e., from which population, and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

> I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act of 1973 (87 Stat. 864, Pub. L. 93-205, 16 U.S.C. 1531 et seq.) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Endangered Species Act of 1973.

(13) The applicant and/or an officer thereof must sign the application.

(c) *Issuance criteria.* The Director shall specifically consider, among other criteria, the following in determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit if granted and exercised will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species, and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity—the applicant's qualifications for the proper care and maintenance of the species and the adequacy of his facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(12) Opinions or views of scientists or other persons or organizations knowledgeable of the species which is the subject of the application or of other matters germane to the application; and

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The number and kind of species which are covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny or the species product;

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 41375, Nov. 27, 1974, as amended at 41 FR 51612, Nov. 23, 1976; 43 FR 32809, July 28, 1978; 44 FR 21289, Apr. 10, 1979; 44 FR 29480, May 26, 1979; 48 FR 57302, Dec. 29, 1983; 50 FR 1059, Jan. 9, 1985]

§ 222.24 Procedures for issuance of permits.

(a) Whenever application for a permit is received by the Director which the Director deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Information received by the Director as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party may within 30 days after the date of publication of such notice, submit to the Director his written data, views, or arguments with respect to the taking, importation, or other action proposed in the application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) Except as provided in Subpart D of 15 CFR Part 904, as soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) If a permit is issued, the Director shall publish notice thereof in the FEDERAL REGISTER, including his finding that (1) such permit was applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973.

(e) The Director may waive the thirty-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Director in the FEDERAL REGISTER within ten days following the issuance of the certificate of exemption or permit. The requirements of this section pertain solely to the permits issued pursuant to § 222.23.

[39 FR 41375, Nov. 27, 1974, as amended at 42 FR 28139, June 2, 1977; 49 FR 1042, Jan. 6, 1984]

§ 222.25 Applications for modification of permit by permittee.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 222.23(c).

§ 222.26 Amendment of permits by NMFS.

All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the

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date of notification, unless otherwise specified.

§ 222.27 Procedures for suspension, revocation, or modification of certificates of exemption.

Any violation of the applicable provisions of Parts 217 through 222 of this chapter, or of the Act, or of a condition of the certificate of exemption may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the certificate of exemption, as provided in Subpart D of 15 CFR Part 904.

[49 FR 1043, Jan. 6, 1984]

§ 222.28 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking, importation, exportation, or other act;

(2) The period of any transit of such person or agent which is incident to such taking, importation, exportation, or other act; and

(3) Any other time while any animal under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision or care.

PART 225—FEDERAL/STATE COOPERATION IN THE CONSERVATION OF ENDANGERED AND THREATENED SPECIES

Sec.
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AUTHORITY: Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-1543, Pub. L. 93-205.

SOURCE: 41 FR 24354, June 16, 1976, unless otherwise noted.

§ 225.1 Purpose of regulations.

The regulations in this part implement section 6 of the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205 which provides, under certain circumstances, for cooperative agreements with and financial assistance to the States.

§ 225.2 Scope of regulations.

This part applies to endangered and threatened species under the jurisdiction of the Department of Commerce (see 50 CFR 222.23(a)).

§ 225.3 Definitions.

In addition to the definitions contained in the Act, and unless the context otherwise requires, in this Part 225:

(a) "Act" means the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 through 1543, Pub. L. 93-205.

(b) "Agreements" mean signed documented statements of the actions to be taken by the State(s) and the Director in furthering certain purposes of the Act. They include:

(1) A Cooperative Agreement entered into pursuant to section 6(c) of the Act and, where appropriate, containing provisions found in section 6(d)(2) of the Act.

(2) A Grant-In-Aid Award which includes a statement of the actions to be taken in connection with the conservation of endangered or threatened species receiving Federal financial assistance, objectives and costs of such actions, and costs to be borne by the Federal Government and by the State(s).

(c) "Application for Federal Assistance" means a description of work to be accomplished, including objectives

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and needs, expected results and benefits, approach, cost, location and time required for completion.

(d) "Director" means the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized designee.

(e) "Program" means a State-developed plan for the conservation and management of all resident species which are deemed by the Secretary to be endangered or threatened and those which are deemed by the State to be endangered or threatened, which includes goals, priorities, strategies, actions, and funding necessary to accomplish the objectives on an individual species basis.

(f) "Project" means a substantial undertaking to conserve the various endangered or threatened species.

(g) "Project segment" means an essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(h) "Resident species" means, for purposes of these regulations, with respect to a State, a species which exists in the wild in that State during any part of its life.

(i) "Secretary" means the Secretary of Commerce or his authorized designee.

§ 225.4 Cooperation with the States.

The Director shall cooperate with any State which establishes and maintains an adequate and active program for the conservation of endangered and threatened species. In order for a State program to be deemed an adequate and active program, the Director must find and reconfirm, on an annual basis, that:

(a) Authority resides in a State agency to conserve resident species determined by the State agency or the Director to be endangered or threatened;

(b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident species in the State which are deemed by the Director to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information and data requested to the Director;

(c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species;

(d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and

(e) Provisions are made for public participation in designating resident species as endangered or threatened.

§ 225.5 Cooperative agreement.

Following receipt of an application by a State for a Cooperative Agreement and a determination by the Director that the State program for endangered and threatened species is adequate and active, the Director shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Grant-In-Aid Award can be approved for endangered or threatened species projects. The Cooperative Agreement must be reconfirmed annually to insure that it reflects new laws, species lists, rules or regulations, and programs, and to demonstrate that the program is still active and adequate. In order for a State to receive financial assistance, such Cooperative Agreement must also contain:

(a) The actions that are to be taken by the Director and the State;

(b) The benefits that are expected to be derived in connection with the conservation of endangered or threatened species; and

(c) The estimated cost of these actions.

§ 225.6 Allocation of funds.

The Director shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various States using the following as the basis for his determination:

(a) The international commitments of the United States to protect endangered or threatened species;

(b) The readiness of a State to proceed with a conservation program con-

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sistent with the objectives and purposes of the Act;

(c) The number of federally listed endangered and threatened species within a State;

(d) The potential for restoring endangered and threatened species within a State; and

(e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

§ 225.7 Financial assistance.

(a) Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement. Subsequent to such agreement, the Director may further agree with a State(s) to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an Application for Federal Assistance and a Grant-In-Aid Award. The availability of Federal funds under a Grant-In-Aid Award shall be contingent upon the continued existence of the Cooperative Agreement.

(b) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other requirements of the Office of Management and Budget Circular No. A-95 (as revised and published in the FEDERAL REGISTER on January 13, 1976 (41 FR 2052)).

(c) The mutual obligations by the cooperating agencies will be set forth in a Grant-In-Aid Award executed between the State and the Director. The Grant-In-Aid Award shall cover the proposed financing and the work items described in the documents supporting it. The form and content for both the Application for Federal Assistance and the Grant-In-Aid Award are provided in the Federal Aid Handbook No. 22.

§ 225.8 Availability of funds.

Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a Grant-In-Aid Award is signed by the Director.

§ 225.9 Payments.

The payment of the Federal share of costs incurred in the conduct of activities included under a Grant-In-Aid Award shall be in accordance with the Treasury Circular 1075.

(a) Federal payments under the Act shall not exceed 75 percent of the program costs as stated in the agreement; except, the Federal share may be increased to 90 percent when two or more States having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such States, jointly enter into an agreement with the Director.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Director as provided in Federal Management Circular 74-7.

(c) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of the Act shall have first been submitted to and approved by the Director. Payments shall be made for expenditures reported and certified by the State agency. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds for the State.

(d) Vouchers and forms provided by the Director and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Director by the State agency.

[41 FR 24354, June 16, 1976, as amended at 49 FR 30074, July 26, 1984]

§ 225.10 Assurances.

A State shall certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

§ 225.11 Submission of documents.

Documents required by section 6 of the Act or by these regulations shall be addressed to the Director, National Marine Fisheries Service, Washington, DC 20235.

§ 225.12 Project evaluation.

Any difference of opinion about a proposed project or appraised value of land to be acquired or any other related matter will be considered by qualified representatives of the Director and the State. Final determination in the event of continued disagreement rests with the Director.

§ 225.13 Contracts.

The State may use its own regulations in obtaining services provided they adhere to Federal laws and the requirements set forth in Federal Management Circular 74-7. The State is the responsible authority without recourse to the Director regarding settlement of contractual issues.

§ 225.14 Inspection.

Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.

PART 226—DESIGNATED CRITICAL HABITAT

Subpart A—Introduction

Sec.
226.1 Purpose of regulations.
226.2 Scope of regulations.

Sec.
Subpart B–Critical Habitat for Marine Mammals—[Reserved]

Subpart C–Critical Habitat for Marine Fish—[Reserved]

Subpart D—Critical Habitat for Marine Reptiles

226.71 Sandy Point, St. Croix, U.S. Virgin Islands.

AUTHORITY: Endangered Species Act of 1973, sec. 7, Pub. L. 93-205, 16 U.S.C. 1536, 87 Stat. 884.

SOURCE: 44 FR 17711, Mar. 23, 1979, unless otherwise noted.

Subpart A—Introduction

§ 226.1 Purpose of regulations.

The regulations contained in this part identify those habitats designated as critical under section 7 of the Endangered Species Act, as amended, by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, for those endangered and threatened species under the jurisdiction of the Secretary of Commerce. The list of these species is found in 50 CFR 222.23(a) for endangered species and 50 CFR 227.4 for threatened species.

§ 226.2 Scope of regulations.

(a) The critical habitat designations contained in this part apply only to the endangered and threatened species listed in this part.

(b) Regulations implementing section 7 of the Endangered Species Act, as amended, are found in 50 CFR Part 402.

(c) The provisions in this part are in addition to, and not in lieu of other regulations of Parts 217 through 227 and 402 of this chapter.

Subpart B–Critical Habitat for Marine Mammals—[Reserved]

Subpart C–Critical Habitat for Marine Fish—[Reserved]

Subpart D—Critical Habitat for Marine Reptiles

§ 226.71 Sandy Point, St. Croix, U.S. Virgin Islands.

LEATHERBACK SEA TURTLE
(DERMOCHELYS CORIACEA)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42'12" North and 64°50'00" West.

PART 227—THREATENED FISH AND WILDLIFE

Subpart A—General Provisions

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227.1 Purpose.
227.2 Scope.
227.3 Definitions.
227.4 Enumeration of threatened species.

Subpart B—Threatened Marine Mammals [Reserved]

Subpart C—Threatened Marine Fish [Reserved]

Subpart D—Threatened Marine Reptiles

227.71 Prohibitions.
227.72 Exceptions to prohibitions.

AUTHORITY: Endangered Species Act of 1973 (as amended), Pub. L. 93 205, 16 U.S.C. 1531 et seq.

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 227.1 Purpose.

The regulations contained in this part identify the species, subspecies, or any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature, under the jurisdiction of the Secretary of Commerce which have been determined to be threatened species under the Endangered Species Act of 1973 and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

§ 227.2 Scope.

(a) The regulations contained in this part apply only to the threatened species enumerated in § 227.4.

(b) The provision of this part are in addition to, and not in lieu of other regulations of Parts 217 through 222 and Part 225 of this Chapter II which prescribe additional restrictions or conditions governing threatened species.

(c) Certain of the threatened fish or wildlife listed in 50 CFR 17.11 and enumerated in 50 CFR 227.4 are included in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The importation, exportation, and reexportation of such species are subject to additional regulations provided in Part 23, Chapter I (Title 50).

§ 227.3 Definitions.

In addition to the definitions contained in the Act, and in Parts 217 and 225 of this chapter, and unless the context otherwise requires, in this Part 227:

(a) "Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1547;

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized delegate. The Assistant Administrator for Fisheries is in charge of the National Marine Fisheries Service;

(c) "Ongoing project(s)" means an activity for scientific purposes or to enhance the propagation or survival of such species which are not conducted in the course of a commercial activity initiated before the listing of the effected species;

(d) "Plastron" means the ventral part of the shell of a sea turtle consisting typically of nine symmetrically placed bones overlaid by horny plates; and

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(e) "Sea turtle(s)" means those sea turtle species enumerated in § 227.4 and any part(s), product(s), egg(s) or offspring thereof, or the dead body or part(s) thereof.

§ 227.4 Enumeration of threatened species.

The species listed as threatened under the Act which are under the jurisdiction of the Secretary of Commerce are:

(a) Green sea turtle (*Chelonia mydas*) except for those populations listed under 50 CFR 222.23(a).[1]

(b) Loggerhead sea turtle (*Caretta caretta*).[1]

(c) Pacific ridley sea turtle (*Lepidochelys olivacea*) except for those populations listed under 50 CFR 222.23(a).[1]

The effective date of the listing of the species in paragraphs (a), (b), and (c) of this section is September 6, 1978.

[43 FR 32809, July 18, 1978, as amended at 45 FR 29055, May 1, 1980]

Subpart B—Threatened Marine Mammals [Reserved]

Subpart C—Threatened Marine Fish [Reserved]

Subpart D—Threatened Marine Reptiles

§ 227.71 Prohibitions.

Except as provided in § 227.72 it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed in any of the following acts with respect to any species enumerated in § 227.4:

(a) Import any such species into, or export any such species from, the United States;

(b) Take any such species within the United States or the territorial sea of the United States;

(c) Take any such species upon the high seas;

(d) Possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of the prohibitions in paragraphs (b) and (c) of this section;

(e) Deliver, receive, carry, transport, or ship in foreign commerce by any means whatsoever, and in the course of a commercial activity, any such species;

(f) Sell, or offer for sale, in foreign commerce any such species;

(g) Deliver, receive, carry, transport, or ship in interstate commerce, by any means whatsoever, and in the course of commercial activity; provided that this paragraph (g) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing; or

(h) Sell, or offer for sale, in interstate commerce any such species; provided that this paragraph (h) shall not apply to any such species taken prior to the effective date of the listing of the species for 1 year after such listing.

§ 227.72 Exceptions to prohibitions.

(a) *Scientific, propagation, or survival permits.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.71 for scientific purposes or to enhance the propagation or survival of such species. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(2) Ongoing scientific, propagation, or survival projects, which would otherwise be prohibited by § 227.71 may continue without a permit until an application for a permit has been denied or 90 days from the effective date of the listing of the effected species, whichever comes first. If a permit has not been denied, ongoing projects may continue beyond this 90-day period provided that the individual responsible for such project(s) has applied for a permit and receives a letter from the Assistant Administrator stating that the application is complete and sufficient for processing within the 90-day period. Projects not receiving a permit

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[1] Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, jurisdiction for sea turtles is limited to turtles while in the water.

or letter indicating sufficiency by the 90th day must cease. Within 30 days of receipt of an application, the Assistant Administrator will determine the completeness and sufficiency of the application for processing. If an application is deemed complete and sufficient for processing, a permit will be issued or denied within the next 90 days beginning with the date of the letter informing the applicant that the application is sufficient. Approved projects shall continue in accordance with the conditions of the permit.

(b) *Permits for zoological exhibition or educational purposes.* The Assistant Administrator may issue permits authorizing activities which would be otherwise prohibited under § 227.71 for zoological exhibition or educational purposes. Applications for these permits are subject to the provisions of Part 220 of this Chapter II.

(c) *Exceptions for injured, dead, or stranded specimens.* If any member of any threatened species listed in § 227.4 is found injured, dead, or stranded, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a State agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such specimens without a permit if such taking is necessary to aid a sick, injured, or stranded specimen or dispose of a dead specimen or salvage a dead specimen which may be useful for scientific study. Wherever possible, live specimens shall be returned to their aquatic environment as soon as possible. Every action shall be reported in writing to the Assistant Administrator within 30 days, and reports of further occurrence shall be made as deemed appropriate by the Assistant Administrator until the specimen is either returned to its environment or disposed of. Reports shall be mailed by registered or certified mail, return receipt requested, to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235, and shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the specimen(s) involved;

(3) Date and location of disposal;

(4) Circumstances requiring the action;

(5) Method of disposal;

(6) Disposition of the specimen(s), including, where the specimen(s) has been retained in captivity, a description of the place and means of confinement, and the measures taken for its maintenance and care; and

(7) Such other information as the Assistant Administrator may require.

(d) *Exception for research or conservation.* Any employee or agent of the National Marine Fisheries Service, the Fish and Wildlife Service, or a State fish and wildlife agency operating a conservation program pursuant to the terms of a Cooperative Agreement with the National Marine Fisheries Service or the Fish and Wildlife Service in accordance with section 6(c) of the Act, designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take any threatened species to carry out scientific research or conservation programs. All such takings shall be reported within 30 days of the taking to the Assistant Administrator who may request additional reports of the taking and research at his discretion.

(e) *Exception for incidental taking*—(1) *General.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, the incidental taking of any member of any species listed in § 227.4 during fishing or scientific research activities not directed toward such members of such species is allowed under the following conditions:

(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

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(B) Resuscitation must be attempted on sea turtles that are comatose or inactive but not dead by:

(*1*) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot, or

(*2*) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of one up to twenty-four hours. The amount of elevation depends on the size of the turtle; greater elevations are needed for larger turtles.

Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to twenty-four if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) *Restricted fishing areas.* [Reserved]

(3) *Gear.* [Reserved]

(f) *Subsistence.* The prohibition in § 227.71(b) shall not apply with respect to the taking of any member of the species of green sea turtle (*Chelonia mydas*) in waters seaward of mean low tide for personal consumption by residents of the Trust Territory of the Pacific Islands if such taking is customary, traditional and necessary for the sustenance of such resident and his immediate family. Sea turtles so taken cannot be transferred to non-residents or sold.

[43 FR 32809, July 28, 1978, as amended at 46 FR 43977, Sept. 2, 1981]

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

Subpart A—General

Sec.

228.1 Purpose.
228.2 Scope.
228.3 Definitions.
228.4 Submission of requests.
228.5 Specific regulations.
228.6 Letters of authorization.

Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

228.11 Specified activity and specified geographical region.
228.12 Effective dates.
228.13 Permissible methods.
228.14 Requirements for monitoring and reporting.

AUTHORITY: 16 U.S.C. 1371(a)(5).

SOURCE: 47 FR 21254, May 18, 1982, unless otherwise noted.

Subpart A—General

§ 228.1 Purpose.

The regulations in this part implement section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), Pub. L. 97-58, which provides a mechanism for allowing, upon request, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region.

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the species involved are not depleted and if the National Marine Fisheries Service (a) finds that the total taking during the specified time period will have a negligible impact on the species and their habitat, and on the availability of the species for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activi-

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ties are contained in subsequent subparts to this Part 228.

§ 228.3 Definitions.

In addition to definitions contained in the Act and in 50 CFR 216.3 and unless the context otherwise requires, in this Part 228:

"Citizens of the United States" and *"U.S. citizens"* mean individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, State and local government agencies shall also constitute citizens of the United States for purposes of this part.

"Incidental, but not intentional, taking" means accidental taking. It does not mean that the taking is unexpected, but rather it includes those takings which are infrequent, unavoidable or accidental. (Complete definition of take is contained in 50 CFR 216.3).

"Negligible impact" means an impact which can be disregarded or which is so small, unimportant, or of so little consequence as to warrant little or no attention. A finding of negligible impact cannot be made if a species or stock is depleted under 16 U.S.C. 1362(1).

"Small numbers" means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

"Specified activity" means any activity, other than commercial fishing, which takes place in a specified geographical region and potentially involves the taking of small numbers of non-depleted marine mammals. The specified activity and specified geographical region should be identified so that the anticipated effects on non-depleted marine mammals will be substantially similar.

"Specified geographical region" means an area within which a specified activity is conducted and which has certain biogeographic characteristics.

§ 228.4 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider allowing the taking by U.S. citizens of small numbers of non-depleted marine mammals incidental to a specified activity, a written request must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235. Requests shall include the following information on the activity in general and cumulative impacts of the total potential taking (by all persons conducting the activity):

(1) A description of the specific activity or class of activities that can be expected to result in incidental taking of non-depleted marine mammals;

(2) The dates and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be taken by age, sex and reproductive condition, and the type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

(5) The anticipated impact of the activity upon the species or stocks;

(6) The anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

(7) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(8) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(9) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rook-

eries, mating grounds, and areas of similar significance;

(10) Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species, level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

(11) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b) The Assistant Administrator shall determine the adequacy and completeness of a request, and if found to be adequate, will invite information, suggestions, and comments through notice in the FEDERAL REGISTER, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations.

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking constitutes a negligible impact on the species or stocks of marine mammals, their habitat, and on the availability of the species for subsistence uses. Any preliminary finding of negligible impact shall be proposed for public comment before specific regulations are promulgated.

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth permissible methods of taking and requirements for monitoring and reporting.

(b) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting or research, the regulations may be modified, in whole or part, after notice and opportunity for public review.

§ 228.6 Letters of authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established. Requests for Letters of Authorization shall be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235. The information to be submitted in a request may be obtained by writing the Assistant Administrator.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the finding that the total of such taking will have a negligible impact on the marine mammal species or stocks and their habitat, and on the availability of the species for subsistence uses.

(c) Notice of issuance of all Letters of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(d) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the National Marine Fisheries Service determines that (1) the regulations prescribed are not being substantially complied with, or (2) the taking allowed is having, or may have, more than a negligible impact on the species or stocks concerned, their habitat, or on their availability for subsistence uses.

(f) The requirement for notice and opportunity for public review in § 228.6(e) shall not apply if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407).

Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

§ 228.11 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 miles and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 228.12 Effective dates.

Regulations in this subpart are effective for the period 1982 through 1986.

§ 228.13 Permissible methods.

(a) The incidental, but not intentional, taking of ringed seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization is permitted during the course of the following activities:

(1) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects; and

(2) Operation of transportation and camp facilities associated with seismic activities.

(b) All activities identified in § 228.13(a) shall be conducted in a manner which minimizes to the greatest extent practicable adverse effects on ringed seals and their habitat.

(c) All activities identified in § 228.13(a) shall be conducted as far as practicable from any observed ringed seal or ringed seal lair. No energy source shall be placed over an observed ringed seal lair, whether or not any seal is present.

§ 228.14 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, State, or local agency monitoring the impacts on ringed seals.

(b) Holders of Letters of Authorization shall designate an individual or individuals to make observations and record the presence of ringed seals and ringed seal lairs along shot lines and around camps, and the information required in § 228.14(c).

(c) An annual report shall be submitted to the Assistant Administrator for Fisheries within 90 days of completion of the year's activities which shall include the following information:

(1) Location(s) of survey activities;

(2) Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location;

(3) Numbers of ringed seals observed, proximity to seismic or associated activities, and any seal reactions observed for each location;

(4) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location; and

(5) Other information as required in a Letter of Authorization.

SUBCHAPTER D—WHALING

PART 230—WHALING PROVISIONS

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AUTHORITY: Sec. 12, 64 Stat. 425; 16 U.S.C. 916j, unless otherwise noted.

SOURCE: 33 FR 5953, Apr. 18, 1968, unless otherwise noted.

See also 45 FR 22949, Apr. 4, 1980.

CROSS REFERENCE: For the regulations of the International Whaling Commission, see Part 351 of this title.

DEFINITIONS

§ 230.1 Factoryship.

The word "factoryship" means a vessel in which or on which whales are treated or processed, whether wholly or in part.

§ 230.2 Land station.

The words "land station" mean a factory on the land at which whales are treated or processed, whether wholly or in part.

§ 230.3 Secondary processing land station.

The words "secondary processing land station" mean a factory on the land which receives from a land station for further processing any or all of those parts of whales which are required, by paragraph 12 of the Schedule of the Whaling Convention of 1946, as amended (§ 351.12 of this title), to be processed by boiling or otherwise.

§ 230.4 Whale catcher.

The words "whale catcher" mean a vessel used for the purpose of hunting, killing, taking, towing, holding on to, or scouting for whales.

§ 230.5 Whales.

(a) "Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e., any whale other than a toothed whale.

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(b) "Blue whale" (Balaenoptera or Sibbaldus musculus) means any whale known by the name of blue whale, Sibbald's rorqual, or sulphur bottom.

(c) "Fin whale" (Balaenoptera physalus) means any whale known by the name of common finback, common rorqual, finback, finner, fin whale, herring whale, razorback, or true fin whale.

(d) "Gray whale" (*Rhachianectes glaucus* or *Eschrichtius gibbosus*) means any whale known by the name of gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(e) "Humpback whale" (*Megaptera nodosa* or *novaeangliae*) means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale, or hunchbacked whale.

(f) "Minke whale" (*Balaenoptera acutorostrata, B. Davidsoni, B. huttoni*) means any whale known by the name of lesser rorqual, little piked whale, minke whale, pike-headed whale, or sharp-headed finner.

(g) "Right whale" (*Balaena mysticetus, Eubalaena glacialis, E. australis,* etc.; *Neobalaena marginata*) means any whale known by the name of Atlantic right whale, Arctic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, Southern pigmy right whale, or Southern right whale.

(h) "Sei whale" (*Balaenoptera borealis*) means any whale known by the name of sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale and shall be taken to include Bryde's whale (*B. brydei*).

(i) "Sperm whale" (*Physeter catodon*) means any whale known by the name of sperm whale, spermacet whale, cachalot, or pot whale.

(j) "Toothed whale" means any whale which has teeth in the jaws.

§ 230.6 Whale products.

The words "whale products" mean any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

LICENSES AND SCIENTIFIC PERMITS

§ 230.10 Licenses required to engage in whaling.

(a) No person shall engage in the taking or processing of any whales without first having obtained an appropriate license.

(b) No permit or license shall be issued except as provided in § 230.13 and §§ 230.70 through 230.77. Licenses issued under § 230.73 shall be governed solely by the requirements of §§ 230.70 through 230.77.

[36 FR 7432, Apr. 20, 1971, as amended at 45 FR 20488, Mar. 28, 1980]

§ 230.11 Applications for licenses.

(a) Applications for licenses to engage in the taking or processing of whales of the species listed in § 230.10, shall be submitted to the Bureau of Commercial Fisheries through the Regional Director, Pacific Northwest Region (Region 1), Bureau of Commercial Fisheries, 6116 Arcade Building, 1319 Second Avenue, Seattle, Wash. 98101. Such applications shall be accompanied by the affidavit or affidavits prescribed in sections 6(d) and (e) of the Whaling Convention Act of 1949 and by a check or U.S. Postal Money Order payable to the Bureau of Commercial Fisheries in the appropriate amount as prescribed by section 6(b) of the Whaling Convention Act of 1949 and as set out in § 230.12.

(b) Applicants for a license to operate a whale catcher must furnish by means of a letter to the Regional Director information specifying the names and addresses of the owner and operator of the vessel, the name, official number, and home port of the vessel, its length, beam, and draft, its gross and net tonnage, the horsepower of its engine, its maximum speed, the number of its crew members, and the basis of compensation for its gunners and crew, including the basis on which bonuses are awarded.

(c) Applicants for a license to operate a factoryship must furnish by means of a letter to the Regional Director information specifying the names and addresses of the owner and operator of the vessel, the name, official number and home port of the

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vessel, its length, beam, and draft, its gross and net tonnage, the horsepower of its engine, its maximum speed, the number of its crew, including whalers, the basis of compensation for its crew and whalers including the basis on which bonuses are awarded, and a list of its processing and manufacturing equipment.

(d) Applicants for a license to operate a land station must furnish by means of a letter to the Regional Director, information specifying the names and addresses of the owner and operator of the land station, the number of its employees, the basis of their compensation, including the basis on which bonuses are awarded, and a list of its processing and manufacturing equipment.

§ 230.12 Schedule of fees.

The following licenses and fees shall be required for each calendar year or any fraction thereof and shall be nontransferable:

(a) Land station licenses for primary processing of whales, $250.

(b) Land station license for secondary processing of parts of whales delivered to it by a land station licensed as a primary processor, $100.

(c) Factoryship license for primary processing of whales delivered by whale catchers, $250.

(d) License for any vessel used exclusively for transporting whale products from a factoryship to a port during the whaling season, $100.

(e) Whale catcher license, $100.

(f) No license fee shall be refunded by reason of the failure of any person to whom a license has been issued to utilize the facility in whaling for which such license was issued.

§ 230.13 Applications for scientific permits.

Applications for scientific permits to take, tag, or study whales for scientific investigations shall be submitted to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240. Scientific permits will be issued free of charge. Applicants for a scientific permit should also include with their application a statement of the specific objectives and operational procedures of their proposed scientific investigation. Upon completion of their research, a report of the results of such research, in triplicate, shall be submitted to the Director of the Bureau of Commercial Fisheries for transmittal to the International Whaling Commission in accordance with paragraph 3 of Article VIII of the International Convention for Regulation of Whaling of 1946.

CLOSED SEASONS

§ 230.20 Whale catchers attached to land stations taking baleen whales.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of taking or killing any baleen whales except during the period April 15 to October 15, both days inclusive: *Provided*, That it is forbidden to kill or attempt to kill blue whales, by any means, in the following areas:

(1) The North Atlantic Ocean for 3 years ending on February 24, 1973.

(2) The North Pacific Ocean and its dependent waters north of the Equator for 5 years beginning with the 1971 season.

(3) In the waters south of the Equator: *Provided further*, That, it is forbidden to kill or attempt to kill humpback whales, by any means, in the following areas:

(4) In the North Atlantic Ocean for a period ending on November 8, 1972.

(5) In the North Pacific Ocean and its dependent waters north of the Equator for 3 years beginning with the 1971 season.

(6) In the waters south of the Equator.

[33 FR 5953, Apr. 18, 1968, as amended at 36 FR 7432, Apr. 20, 1971]

§ 230.21 Whale catchers attached to land stations taking sperm whales.

It is forbidden to use a whale catcher attached to a land station for the purpose of taking or killing sperm whales except during the period April 1, to November 30 following, both days inclusive.

§ 230.22 Whale catchers attached to factoryships taking sperm whales.

It is forbidden to use a factoryship or whale catcher attached thereto for the purpose of taking or treating sperm whales in the waters between 40° south latitude and 40° north latitude. For all other waters, it is forbidden to use factoryships or whale catchers attached thereto for the purpose of taking or treating sperm whales except during the period April 15 to December 15 following both days inclusive.

[36 FR 7432, Apr. 20, 1971]

CATCH QUOTAS

§ 230.25 Fin and sei whale quotas for the North Pacific.

Beginning with the 1971 season for taking baleen whales, it is forbidden for persons or vessels under the jurisdiction of the United States to take more than 40 fin whales and 51 sei whales from the waters of the North Pacific Ocean. The fin whale quota may be converted to sei and Bryde's whales combined, or vice versa, in terms of the formula as defined in paragraph 8(b) of the Schedule of the Convention: *Provided*, That the total catch of one or the other species does not exceed the level which is 10 percent (10%) above the quota for each species as prescribed above.

[36 FR 7432, Apr. 20, 1971]

§ 230.26 Sperm whale quota for the North Pacific Ocean.

Beginning with the 1971 season for taking sperm whales, it is forbidden for persons or vessels under the jurisdiction of the United States to take more than 75 sperm whales from the waters of the North Pacific Ocean and dependent waters.

[36 FR 7432, Apr. 20, 1971]

RECORDS AND REPORTS

§ 230.30 Records to be maintained on whale catchers.

There shall be maintained on each whale catcher a suitable log book or other record in which shall be recorded the following information, and such record shall be available for inspection by any person authorized by law or by this part to act as an inspector or enforcement officer, who shall be permitted to abstract therefrom such information as may be needed by the U.S. Government:

(a) The date and hour of the killing or capture of each whale;

(b) The point in latitude and longitude where each whale was killed or captured;

(c) The species of each whale killed or captured;

(d) The time of delivery of each whale to the land station or factoryship;

(e) Data specified under paragraphs (a), (b), and (c) of this section for each whale killed and later lost, or for some other reason not delivered to a factoryship or land station for processing, with an account of the circumstances surrounding such loss or nondelivery; and

(f) Any observations on migration of whales and on location of calving grounds.

§ 230.31 Records to be maintained on factoryships and at land stations.

(a) There shall be maintained in duplicate on board each factoryship and at each land station a detailed record of all whales received and processed as follows:

(1) Serial number of the whale (begin with number 1 on January 1 of each year).

(2) Species of the whale.

(3) Date and time killed and date and time received by the factoryship or land station.

(4) Sex of the whale.

(5) Length of the whale. (Whales must be measured when at rest on deck or platform, as accurately as possible by means of a steel tape measure fitted at the zero end with a spiked handle which can be stuck into the deck planking abreast of one end of the whale. The tape measure shall be stretched in a straight line parallel with the whale's body and read abreast the other end of the whale. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes. Measurements, after

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being accurately read on the tape measure, shall be logged to the nearest foot, that is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. The measurement of any whale which falls on an exact half foot shall be logged at the next half foot, e.g., 76 feet 6 inches precisely shall be logged at 77 feet.)

(6) Sex of fetus if present.

(7) Length of fetus in feet and inches.

(8) A description of the stomach contents of the whale.

(9) Name of whale catcher which took the whale.

(10) Name of gunner who killed the whale.

(11) The exact location in which the whale was taken, stated in degrees and minutes of latitude and longitude.

(12) Under "Remarks" enter, if the whale is a female, whether lactating or milk-filled as well as abnormalities or peculiarities concerning the whale and the character and quantity of any portion of the whale transferred to a secondary processing plant.

(b) Each sheet of such reports shall be verified or approved by a person authorized by law or by this part to act as inspector or enforcement officer, and the said duplicate reports for each calendar year shall be submitted to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, within 30 days after the end of each calendar year.

§ 230.32 Records to be maintained at secondary processing land stations.

(a) There shall be maintained by all licensed secondary processing land stations receiving from land stations parts of whales for further processing a suitable ledger or book in which the following information shall be recorded, and such records shall be available for inspection by any authorized person:

(1) The kind and quantity of parts of whales received.

(2) The date of receipt thereof.

(3) The kind and quantity of products derived therefrom.

(b) Said ledger or book or certified true copies thereof shall be submitted in duplicate to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, within 30 days after the end of each calendar year.

§ 230.33 Report on employment, craft, and products of whaling operations.

The person or persons responsible for the operation of every factoryship, land station, and secondary processing land station shall annually submit in duplicate to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, within 30 days after the end of each calendar year, a report on employment, craft, and products, which shall show the number of persons employed, the nature of the task which each performs and the manner in which each is remunerated; the number and type of vessels and aircraft operated, including separate totals for surface vessels and aircraft; specifying, in the case of surface vessels, the average length and horsepower of whale catchers and the gross tonnage and horsepower of other vessels; and the quantity and type of products manufactured, including semiprocessed products delivered to secondary processing land stations. Such reports shall be subscribed and sworn to by the person or persons responsible for the operation of said factoryships, land station and secondary processing land station before a notary public or a person authorized by law or by this part to act as inspector or enforcement officer.

§ 230.34 Records retention period.

The record required to be maintained under the regulations of this part shall be retained by the person or persons responsible for their preparation and maintenance for a period of 6 months following the end of the calendar year to which such records apply.

SALVAGE OF UNCLAIMED WHALES

§ 230.40 No processing license required.

No license shall be required for the salvage and processing of any "dauhval" or dead whale found upon a beach or stranded in shallow water, or of any unclaimed dead whale found floating at sea.

§ 230.41 Reporting of salvage of dead whales required.

(a) Any person or persons salvaging and/or processing any dead whale of any of the species enumerated in § 230.5 shall submit a report in writing to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240, no later than within 30 days after the end of the then current calendar year.

(b) Such report shall show the date and exact locality in which such dead whale was found, its species and length, the disposition made of the whale, the firm utilizing or processing it, the products derived therefrom, and any other relevant facts.

MOLESTING OR UNAUTHORIZED INTERFERENCE WITH WHALES

§ 230.50 Molesting of whales prohibited.

The chasing, molesting, exciting, or interfering with, through the use of firearms or by any other manner or means, of any whale of the species listed in § 230.5 or of any other species protected by the provisions of the International Convention for the Regulation of Whaling of 1946, except for the purpose of hunting, killing, taking, towing, holding on to or scouting for whales in accordance with the provisions of the Convention, the regulations of the International Whaling Commission, and the regulations in this part, is prohibited. Persons violating this section shall upon arrest and conviction, be subject to the penalties imposed by the Whaling Convention Act of 1949.

INSPECTION AND ENFORCEMENT

§ 230.60 Fish and Wildlife Service employees designated as enforcement officers.

Any employee of the Fish and Wildlife Service duly appointed and authorized to enforce Federal laws and regulations administered by the Fish and Wildlife Service is authorized and empowered to act as a law enforcement officer for the purposes set forth in the Whaling Convention Act of 1949.

§ 230.61 State officers designated as enforcement officers.

Any employee of a State government who has been duly designated by the Director, Bureau of Commercial Fisheries, Department of the Interior, with the consent of the State government concerned, is authorized and empowered to act as a Federal law enforcement officer for the purposes set forth in the Whaling Convention Act of 1949.

§ 230.62 Disposal of perishable seized whales and whale products.

Any whales or whale products which are seized pursuant to the Whaling Convention Act of 1949 and which are deemed to be perishable, shall be preserved, processed, and sold as soon as possible under the direction and control of the Bureau of Commercial Fisheries. All proceeds from such sales shall be placed in escrow in any bank or in any manner as the Secretary of the Interior may direct pending the outcome of litigation.

SUBSISTENCE

AUTHORITY: Whaling Convention Act (WCA 16 U.S.C. 916a-1).

SOURCE: Sections 230.70 through 230.77 appear at 45 FR 20488, Mar. 28, 1980, unless otherwise noted.

§ 230.70 General.

No person shall hunt, strike, harass, kill or land a bowhead whale except in accordance with the Cooperative Agreement between the Administrator of the National Oceanic and Atmospheric Administration and the Alaska Eskimo Whaling Commission, dated March 26, 1981 and extended on February 28, 1982 (47 FR 20137 May 11, 1982), and the Alaska Eskimo Whaling Commission's Management Plan as referenced in that Agreement.

(Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), Whaling Convention Act, (16 U.S.C. 916, et seq.))

[47 FR 20137, May 11, 1982]

§ 230.71 Definitions.

As used in §§ 230.70 through 230.77 of this Part 230:

(a) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration;

(b) "Bowhead" means a whale of the Bering Sea stock of bowhead whales, *Balaena mysticetus;*

(c) "Calf" means any bowhead which is less than 21 feet in length as measured from the point of the upper jaw and the notch between the tail flukes;

(d) "Landing" means bringing a bowhead or any parts thereof onto the ice or land in the course of whaling operations;

(e) "Whaling captain" or "captain" means any Indian, Aleut, or Eskimo domiciled in a whaling village who is in charge of a vessel and a whaling crew;

(f) "Stinker" means a dead unclaimed bowhead found upon a beach, stranded in shallow water, or floating at sea;

(g) "Strike" means hitting a bowhead with a harpoon, lance, or explosive dart;

(h) "Whaling" means the hunting, striking, harassing, killing, or landing of bowheads, but does not include the salvage or processing of any stinker;

(i) "Whaling crew" means those persons under the control of a captain, who collectively participate as a unit in whaling;

(j) "Whaling village" means any of the villages of Gambell, Savoonga, Wales, Kivalina, Point Hope, Wainwright, Barrow, Nuigsut, and Kaktovik in the State of Alaska; and

(k) "Wasteful manner" means a method of whaling which is not likely to result in the landing of a struck bowhead or which does not include all reasonable efforts to retrieve the bowhead.

§ 230.72 Prohibited acts.

(a) No person shall engage in whaling except a whaling captain licensed pursuant to § 230.73 or a member of a whaling crew under the control of a captain.

(b) No whaling captain shall engage in whaling for any calf or any bowhead whale accompanied by a calf.

(c) No whaling captain shall engage in whaling in a wasteful manner.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in native subsistence whaling.

(f) No whaling captain shall continue to whale after, (1) the quota set forth in § 230.74 for his village of domicile is reached, or (2) the license under which he is whaling is suspended as provided in § 230.73(b), or (3) the Assistant Administrator has declared that the whaling season is closed pursuant to § 230.74(c).

(g) No whaling captain shall claim domicile in more than one whaling village.

(h) No person may salvage a stinker without complying with the provisions of § 230.75.

(i) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart which does not bear a permanent distinctive mark identifying the captain as the owner thereof.

§ 230.73 Licenses.

(a) A license is hereby issued to whaling captains.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with these regulations.

§ 230.74 Quotas.

(a) During the calendar year 1980, the quota for bowheads is allocated among whaling villages as follows:

(1) Savoonga—2 whales landed or 3 struck, whichever occurs first;

(2) Gambell—2 whales landed or 3 struck, whichever occurs first;

(3) Wales—1 whale landed or 1 struck, whichever occurs first;

(4) Kivalina—1 whale landed or 2 struck, whichever occurs first;

(5) Pt. Hope—2 whales landed or 3 struck, whichever occurs first;

(6) Wainwright—2 whales landed or 3 struck, whichever occurs first;

(7) Barrow—5 whales landed or 7 struck, whichever occurs first;

(8) Kaktovik—2 whales landed or 3 struck, whichever occurs first;

(9) Nuigsut—1 whale landed or 1 struck, whichever occurs first;

(b) When the number of bowheads struck or landed by whaling captains domiciled in a whaling village equals the quota for such whaling village as set forth in paragraph (a) of this section, whaling by all captains domiciled in that whaling village shall cease. All license holders shall be notified promptly by the Assistant Administrator for Fisheries using all reasonable means of communication. Licenses held by whaling captains domiciled in a whaling village which has reached its quota shall not be valid after the quota for that whaling village has been reached.

(c) The Assistant Administrator for Fisheries shall monitor the bowhead whale hunt and keep tally of the number of bowheads landed and struck. When the number of bowhead whales landed or struck reaches the sum total of the village allocations set forth in § 230.74(a), the Assistant Administrator for Fisheries may declare that the whaling season is closed and there shall be no further whaling during the calendar year 1980. Closure shall become effective upon receipt by the FEDERAL REGISTER of notice by the Assistant Administrator for Fisheries that the season has been closed pursuant to this regulation.

(d) If for any reason the landing or struck quota for whaling villages is not reached, the part of the quota which remains may be reassigned by the Assistant Administrator to a second whaling village: Provided, that if any other whaling village has exceeded its quota, the Assistant Administrator shall not reassign the quota if he determines that it is likely to result in the total number of whales landed or struck exceeding the bowhead quota then in effect under the Schedule of the International Convention for the Regulation of Whaling. In making such reassignment, the Assistant Administrator shall consult with representatives of as many whaling villages as time reasonably permits.

§ 230.75 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He shall provide promptly to the Assistant Administrator or his representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.76 Reporting by whaling captains.

(a) A representative of the Assistant Administrator may request each whaling captain licensed pursuant to § 230.73 to provide written statement of his name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance and explosive dart. Representatives of the Assistant Administrator may provide each captain with a form approved by the Assistant Administrator to facilitate reporting under this paragraph.

(b) Each whaling captain shall provide to appropriate representatives, on request, an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing or a bowhead whale and where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing;

(2) The length (as measured from the point of the upper jaw and the notch between the tail flukes), the extreme width of the flukes, and the sex of the bowhead(s) landed;

(3) The length and sex of a fetus, if present in a landed bowhead whale;

(4) An explanation of circumstances associated with the striking or attempted striking of any bowhead whale not landed; and

(5) The number of bowhead whales sighted by the whaling captain or any member of the whaling crew.

§ 230.77 Penalties.

Any person who whales in contravention of these regulations, or violates any other provision of the Whaling Convention Act shall be subject to the penalties set forth in 16 U.S.C. 916e and 916f, and any other penalties provide by law.

SUBCHAPTER E—NORTHWEST ATLANTIC COMMERCIAL FISHERIES [RESERVED]

SUBCHAPTER F—AID TO FISHERIES

PART 250—FISHERIES LOAN FUND PROCEDURES

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250.15 Default.
250.16 Remedies after default.

Authority: 70 Stat. 1121, as amended; 16 U.S.C. 742(c), as amended; and Reorganization Plan No. 4 of 1970.

Source: 48 FR 23792, May 26, 1983, unless otherwise noted.

Subpart A—Introduction

§ 250.1 Purpose.

These regulations implement the latest extension of section 4 the Fish and Wildlife Act of 1956 as amended by the American Fisheries Promotion Act. The amended section 4 creates a revolving Fisheries Loan Fund to be used for assisting the owners or operators of commercial fishing vessels to avoid default on primary vessel financings and to cover vessel operating losses.

§ 250.2 Definitions.

For the purpose of this part, the following terms mean:

(a) *Secretary.* The Secretary of Commerce or his designee.

(b) *Act.* The Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742(c)).

(c) *State.* Any State, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(d) *Citizen of the United States.* Any individual who is a United States citizen by law, birth, or naturalization; any association, partnership, or corporation which meets the requirements of section 2 of the Shipping Act, 1916, for documenting vessels in the coastwise trade; or any State, agency of a State, or group of States.

(e) *National of the United States.* Any individual who is a United States national by law or birth or any association, partnership, or corporation which meets the requirements of section 2 of the Shipping Act, 1916, for documenting vessels in the coastwise trade (except that organization under the laws of American Samoa is permissible and individuals who are either nationals or citizens of the United States meet the Shipping Act requirements for the purpose of this Program).

(f) *Commercial fishing vessel.* Any waterborne craft documented under U.S. law or registered under State laws whose purpose is commercial fishing or assisting commercial fishing.

(g) *Fund.* The Fisheries Loan Fund authorized by 16 U.S.C. 742(c), as amended.

(h) *Obligation.* Any evidence of indebtedness.

(i) *Obligor.* Any owner or operator of a commercial fishing vessel who is primarily liable for payment of any obligation.

§ 250.3 Loan authorization and priority.

(a) Loans shall be made only for one of the following purposes:

(1) Assisting obligors to avoid default obligations financing the construction, reconstruction, reconditioning, or purchase of commercial fishing vessels of at least 5 net tons when those obligations are guaranteed by the Federal Government under the Fisheries Obligation Guarantee Program authorized by Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 through 1280).

(2) Assisting obligors to avoid default on obligations financing the construction, reconstruction, reconditioning, or purchase of commercial fishing vessels of at least 5 net tons (i) when those obligations are not guaranteed under the Fisheries Obligation Guarantee Program, but; (ii) the vessels involved meet the use and documentation requirements, and the obligors meet the citizenship requirements, which would apply if the obligations had been guaranteed under the Fisheries Obligation Guarantee Program.

(3) Assisting the owners or operators of commercial fishing vessels of any size where there has been, or may be, a net operating loss.

(4) To the extent funds are available and consistent with any limitations on apportionments made by the Office of Management and Budget, the first priority for loans is paragraph (a)(1) of this section, and the second priority for loans is paragraph (a)(2) of this section. Any monies not required for paragraphs (a)(1) and (a)(2) will be used for paragraph (a)(3) of this section.

[48 FR 23792, May 26, 1983, as amended at 50 FR 7921, Feb. 27, 1985]

Subpart B—Application

§ 250.4 Eligibility.

An eligible applicant must be a citizen or national of the United States and must:

(a) Reside or conduct business in any State;

(b) Own or operate a commercial fishing vessel used for commercial fishing operations; and

(c) Demonstrate that he has substantial experience and proven ability in the management and financing of fishing operations and that the loan is likely to result in the continued viability of the commercial fishing operation. In making this determination, the Secretary shall consider, among other factors, economic conditions within any fishery, the negative financial effect these conditions may have had, and the uncertainty these conditions may cause over the longer term.

(Approved by the Office of Management and Budget under control number 0648-0133)

[48 FR 23792, May 26, 1983, as amended at 48 FR 57302, Dec. 29, 1983]

§ 250.5 Other requirements.

(a) The applicant must demonstrate at the time of application that the loan applied for is not otherwise available at reasonable rates which permit continued operation. The loan applied for shall be deemed to be otherwise available at reasonable rates which permit continued operation unless an applicant can show:

(1) Proof of at least two refusals of the desired credit from the applicant's bank. This proof of refusal must be dated and state the amount of loan and terms requested.

(2) That the desired credit is otherwise unavailable on reasonable terms from sources other than banks, as from:

(i) The disposal at a fair price of assets not required by the applicants in the conduct of his business or not reasonably necessary to its potential growth, (ii) use of personal credit and/or resources of the owner, partners, management, affiliates, or principal stockholders of the applicant, or (iii) from other known sources of credit.

(b) Bank refusals to advance credit will not be considered the full test of credit unavailability where there is reason to believe that credit is otherwise available on reasonable terms from sources other than banks. Nevertheless, in the case of an application by an obligor whose obligation is guaranteed under the Fisheries Obligation Guarantee Program, proof of the refusal of the obligor's bank and at least one other source to extend further credit on behalf of the obligor may constitute proof that the credit applied for is not otherwise available on reasonable terms.

§ 250.6 Application processing and procedures.

(a) Applicants for loans under § 250.3(a)(1) may apply at any time (the Fund will, however, expire on September 30, 1983). Applicants for loans under § 250.3(a)(2) may apply only during such open seasons as the Secretary provides by further notice. In the event monies become available under § 250.3(a)(3), open seasons will be established by further notice. Available monies for all purposes may be regionally apportioned and maximum loan amounts will be established by further notice. Restrictive application criteria will be established by further notice for loan applications under § 250.3(a)(2).

(b) *Forms.* Applicants must file an application, furnished by the National Marine Fisheries Service, with the Regional Branch of the National Marine Fisheries Service's Financial Services Division in the Region in which the applicant conducts his business. The Regional Offices' addresses follow:

(1) *Northeast Region.* (Maine, Massachusetts, Rhode Island, Connecticut, New Hampshire, New York, New Jersey, Delaware, Maryland, Virginia, and the Great Lakes States): Financial Services Branch, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930, (617) 281-3600.

(2) *Southeast Region.* (North Carolina, South Carolina, Georgia, Flordia, Alabama, Mississippi, Louisiana, Texas, Puerto Rico, Virgin Islands): Financial Services Branch, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, (813) 893-3148.

(3) *Southwest Region.* (California, Hawaii, American Samoa, Guam, Trust Territory of Pacific Islands): Financial Services Branch, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2478.

(4) *Northwest Region.* (Washington, Oregon, Alaska): Financial Services Branch, National Marine Fisheries Service, 7600 Sandpoint Way, NE (BIN C15700) Seattle, Washington 98115, (206) 446-6118.

(c) *Processing of applications.* If the application is materially complete and the applicant is eligible, the Regional Financial Services Branch will accept the application and assign it a case number. Applications under § 250.3(a)(2) will be considered in the order of their submission. Applications received after available monies are exhausted will not be considered. The Regional Financial Services Branch will evaluate applications being considered for funding. After a decision is made, the Regional Financial Services Branch will inform the applicant.

Subpart C—Loans

§ 250.7 Approval.

(a) The Secretary will approve the loan by a loan authorization letter covering the terms and conditions of the loan.

(b) Loan documents will be furnished by the Secretary. Applicants whose applications are not approved will be notified by a letter from the Financial Services Branch.

§ 250.8 Amount of loan and other restrictions.

Loan amounts may be limited from time to time in order to prevent exhaustion of available loan monies and to assure that monies will be used effectively. The amount any one borrower, or related borrowers, may borrow will be restricted. Only principals may apply. Restrictions regarding length of fisheries experience and other factors will be established by further notice. Loan amount limitations and other requirements will be effected by instructions from the Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C.

§ 250.9 Interest.

The rate of interest on all loans made under § 250.3 (a)(1) and (a)(2) will be 3 percent. Interest rates on loans made under § 250.3(a)(3) will be the rate prevailing for loans made under the Emergency Agricultural Credit Act of 1978 (7 U.S.C. preceding 1961 note).

§ 250.10 Maturity.

The maturity of any loan will be determined by the Secretary, but may not exceed 10 years.

§ 250.11 Security.

Loans will be approved only upon the furnishing of such security or other reasonable assurance of repayments as the Secretary may require.

§ 250.12 Insurance.

If insurance is required on property under the terms of a loan, it must be in a form, and from an underwriter, satisfactory to the Secretary.

§ 250.13 Inspection of property.

The Secretary shall have access at all reasonable times to all vessel or other property in connection with a loan or loan application.

§ 250.14 Books, records, and reports.

The Secretary shall have the right to inspect the applicant's books and records, including tax returns. The Secretary may also require periodic reports to be submitted by a loan recipient.

(Approved by the Office of Management and Budget under control number 0648-0133)

[48 FR 23792, May 26, 1983, as amended at 48 FR 57302, Dec. 29, 1983]

Subpart D—Default and Remedies

§ 250.15 Default.

The borrower's failure to conform to the Act, these regulations, or the loan documents will be a default. The Secretary's remedy for defaults is acceleration of the total loan amount due, foreclosure on security, and pursuit of all other collection avenues. Default may result in discontinuance of any further disbursement of loan funds to the borrower.

§ 250.16 Remedies after default.

Specific provisions governing remedies after default will be included in the loan documents. Upon default, the Secretary may:

(a) Take possession of all collateral given as security for the loan;

(b) Initiate legal proceeding of any type against the borrower or the security, including foreclosure; and

(c) Pursue all other available remedies.

PART 251—FINANCIAL AID PROGRAM PROCEDURES

Subpart A—General Policy

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251.1 Definitions.
251.2 Scope and purpose.
251.3 Policy.
251.4 Policy interpretations and determinations.
251.5 Organization.
251.6 Principal offices of the National Marine Fisheries Service.
251.7 Information sources and needs.
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Subpart B—Conditional Fisheries

251.20 Fishery of yellowfin tuna in the area regulated by the Inter-American Tropical Tuna Commission.
251.21 Fishery for salmon in Alaska.
251.22 Fishery for American lobster (Homarus Americanus) in the Gulf of Maine.
251.23 Fishery for salmon in Washington, Oregon, and California.
251.24 Fishery for king crab in Alaska.
251.25 Fishery for surf clams.
251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder).

AUTHORITY: Sec. 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742) Title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279) sec. 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1177) National Environmental Policy Act, 42 U.S.C. 4321-4347; and Reorganization Plan No. 4 of 1970, 86 Stat. 909.

SOURCE: 38 FR 29328, Oct. 24, 1973, unless otherwise noted.

Subpart A—General Policy

§ 251.1 Definitions.

For the purposes of this part, the following terms shall be construed as follows:

(a) *Secretary.* This term means the Secretary of Commerce or his delegate.

(b) *Director.* This term means the Director, National Marine Fisheries

Service, National Oceanic and Atmospheric Administration or his delegate.

(c) *State.* This term means the several States of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

(d) *Agency.* This term means any Federal, State, or local Government, or International Organization to which the United States is a party, or any combination thereof, duly authorized to carry out functions related to the Fisheries Resources or the Fishing Industry.

(e) *Fisheries resources.* This term means any form, or forms, of animal or plant life found in the aquatic environment.

(f) *Fishing industry.* This term means a part, or parts, of the economic systems of labor and capital, directly or indirectly, deriving revenue from activities related to the Fisheries Resources.

(g) *Fishery.* This term means a part of the Fishing Industry engaged in harvesting a specific part, or parts, of the Fisheries Resources for commercial purposes.

(h) *Management.* This term means Agency activities related to assisting the Fishing Industry or protecting the Fisheries Resources.

(i) *Conditional fishery.* This term means a Fishery in which National Marine Fisheries Service financial assistance for fishing vessels will be approved only under provisional terms consistent with needs and objectives of Management, as determined by the Director. The terms under which financial assistance related to a Conditional Fishery may be approved will be set forth in the regulations for each program. (See § 251.2(c).)

§ 251.2 Scope and purpose.

(a) This part will provide for the central filing of (1) the Administrator's policy related to restricting the use of financial assistance programs in certain fisheries, (2) notices of proposed rule making, (3) locations of principal offices where the public may obtain information related to the functions cited in paragraph (b) of this section and the regulations cited in paragraph (c) of this section.

(b) This part sets forth policy and procedures under which the Director will perform his general responsibilities related to the following:

(1) The functions in section 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742c), which relate to the "Fisheries Loan Fund" for the purpose of providing financial assistance to commercial fisheries.

(2) The functions in section 607 of the Merchant Marine Act, 1936, as amended by the Merchant Marine Act of 1970 (46 U.S.C. 1177), which relate to the creation of "Capital Construction Funds" including tax deferrals, under certain conditions, to those owning or leasing vessels which are operated in the fisheries of the United States.

(3) The functions in Title XI of the Merchant Marine Act, 1936, as amended, and as amended by the Federal Ship Financing Act of 1972 (46 U.S.C. 1271 through 1279) which relate to the guarantee of certain obligations for, among other things, the construction, reconstruction or reconditioning of fishing vessels.

(4) The functions in section 4331 of the National Environmental Policy Act (42 U.S.C. 4331), which relate to the responsibility of the Federal Government to improve and coordinate Federal programs, including financial assistance, that impact on the natural environment.

(c) *Cross references.* (1) For regulations relating to the functions quoted in paragraph (b)(1) of this section see Part 250 of this chapter governing Fisheries Loan Fund Procedures.

(2) For regulations relating to the functions quoted in paragraph (b)(2) of this section see Part 259 of this chapter governing Capital Construction Funds.

(3) For regulations relating to the functions quoted in paragraph (b)(3) of this section see Part 255 of this chapter governing Fishing Vessel Obligation Guarantee Procedures.

§ 251.3 Policy.

(a) Section 742(f) of the Fish and Wildlife Act of 1956, as amended, provides, in part, that the Secretary shall (1) consider and determine the policies and procedures that are necessary and desirable in carrying out efficiently and in the public interest the laws relating to fish; (2) develop and recommend measures which are appropriate to assure the maximum sustainable production of fish and fishery products and to prevent unnecessary and excessive fluctuations in such production; and (3) take such steps as may be required for the development, advancement, management, conservation, and protection of the fisheries resources.

(b) Under Title XI of the Merchant Marine Act, 1936, as amended, no commitment to guarantee an obligation shall be made by the Secretary unless he finds that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources.

(c) Section 607(a) of the Merchant Marine Act, 1936, as amended, provides, in part, that the deposits in a Capital Construction Fund, and all withdrawals from the Fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary of Commerce may by regulation prescribe or as are set forth in such agreement. Regulations under Part 259 of this chapter related to "Capital Construction Funds" and qualified withdrawals from an Interim Fund established for fishing vessels under the Merchant Marine Act, 1936, as amended. Under existing Interim Agreements, the Secretary may determine that withdrawals which would add fishing vessels to an existing fleet in a fishery will be inconsistent with the wise use of the fishery resource involved, and inconsistent with the development, advancement, management, conservation, or protection of that resource, and therefore may from time to time withhold his consent to the qualification of such withdrawals. The form of existing Interim Agreement appears in 36 FR 19699, October 9, 1971.

(d) Section 4331 of the National Environmental Policy Act, provides, in part, that the Federal Government use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal programs to the benefit of the Nation.

§ 251.4 Policy interpretations and determinations.

(a) The Director will interpret and apply, to the extent practicable, the language quoted in paragraphs (a), (b), (c), and (d) of § 251.3, to administer financial assistance programs in a manner which, on balance, will be consistent with the needs and objectives of Management related to each Fishery.

(b) It is recognized that (1) the Fisheries Resources, upon which the Fishing Industry depends, are renewable but limited with respect to yield; (2) the Fisheries Resources are subject to increasing fishing pressures and uncertainties; (3) management must be strengthened to produce desired benefits from the Fisheries Resources; and (4) it would not be a wise and efficient use of financial assistance programs to encourage the introduction of vessels into a Fishery classified as a Conditional Fishery in this part.

(c) The National Marine Fisheries Service shall, under procedures established, or to be established, by the Director, maintain a continuing review of all Fisheries Resources for the purpose of determining a Fishery which may be in need of regulation as a Conditional Fishery to carry out the policy, intent, and purposes of this part.

(d) The Director shall take actions to publish notices of proposed rulemaking related to a Fishery being considered for regulation as a Conditional Fishery under this part. The public and Agency officials shall be given 90 days to comment on such notices of proposed rulemaking.

(e) In any case when it is determined that a Fishery is to be regulated as a Conditional Fishery under this part and a regulation related to that Conditional Fishery is to be adopted, such regulation, to be incorporated in Subpart B of this part, shall be published in the Federal Register, after 90 but within 180 days of the date the notice of proposed rulemaking with respect to such Fishery was published as set forth in paragraph (d) of this section.

(f) Findings and determinations made by the Director in accordance with this part will be based on source materials related to Management and the Fishery under consideration and made available through procedures as set forth in this part.

(g) Findings and determinations for financial assistance applications related to fishing vessels operating in a Fishery not yet regulated as a Conditional Fishery in this part may be made under existing delegations of authority. Such findings and determinations shall be (1) based on an evaluation of available information related to Management and the particular Fishery under consideration, (2) made using the guidelines and criteria as set forth in §§ 251.8 and 251.9 of this part, and (3) consistent with the policy, intent and purposes of this part.

(h) Amendments to, or revisions of, this part may be made when new information becomes available, or at any time, to add or to delete a Conditional Fishery from this part.

§ 251.5 Organization.

(a) The National Oceanic and Atmospheric Administration (NOAA) is a component of the Department of Commerce.

(b) The National Marine Fisheries Service (NMFS), a component of NOAA, has responsibility to carry out generally the functions quoted in this part.

§ 251.6 Principal offices of the National Marine Fisheries Service.

(a) The mailing address of the Office of the Director, NMFS, is:

Director
National Marine Fisheries Service
3300 Whitehaven Street NW.
Washington, DC 20235

(b) Mailing addresses of the Offices of the Regional Directors, NMFS, are:

Director, Northwest Region
National Marine Fisheries Service
1700 Westlake Avenue North
Seattle, Washington 98109

Director, Southeast Region
National Marine Fisheries Service
Duval Bldg.
9450 Gandy Blvd.
St. Petersburg, Florida 33702

Director, Northeast Region
National Marine Fisheries Service
Federal Building
14 Elm Street
Gloucester, Massachusetts 01930

Director, Southwest Region
National Marine Fisheries Service
300 South Ferry Street
Terminal Island, California 90731

Director, Alaska Region
National Marine Fisheries Service
P.O. Box 1668
Juneau, Alaska 99801

§ 251.7 Information sources and needs.

(a) Information for consideration under this part should relate to the Fisheries Resources, the Fishing Industry, and Management relative to the Fishery under consideration for regulation as a Conditional Fishery.

(b) All sources that may be anticipated to provide fair and reasonable information should be explored.

(c) Information should include, but not be limited to, material in the following general classifications: (1) Environmental, (2) biological, (3) economic, (4) social, (5) legal, (6) international, and (7) national interests.

§ 251.8 Evaluation guidelines.

(a) For each Fishery under consideration for regulation as a Conditional fishery general guidelines for evaluation will be conditions that exist relating to each Fishery and (1) international fishery agreements or conventions, to which the United States is a party, dealing with fishery conservation or management, (2) Agency regulations dealing with fishery conservation or management, (3) the available data base, (4) proposed designated areas or zones, (5) the current and projected status of the existing fishing fleet, (6) the harvesting activities of fishing vessels engaged in that Fishery, (7) foreign competition, (8) Management, and (9) other relevant factors.

§ 251.9 Evaluation criteria.

(a) For each Fishery under consideration to be regulated as a Conditional fishery the Director will evaluate (1) related information received from interested parties, (2) related environmental factors, (3) the history, present status, and prospective developments related to the Fishery, (4) conditions that may be necessary for reasonable improvement of a depressed Fishery, (5) conditions that may be necessary for reasonable stability of an economically and environmentally sound Fishery, (6) conditions that could contribute to adverse fluctuations or declines in yield, (7) the need to improve the economic efficiency of the fishing fleet, (8) the need to assure for fishermen safe and healthful fishing vessels, (9) the need to improve the engineering efficiency of the fishing vessels operating in the Fishery, (10) social needs, and (11) information and data on hand related to that Fishery.

Subpart B—Conditional Fisheries

§ 251.20 Fishery for yellowfin tuna in the area regulated by the Inter-American Tropical Tuna Commission.

[39 FR 25325, July 10, 1974]

§ 251.21 Fishery for salmon in Alaska.

[39 FR 34053, Sept. 23, 1974]

§ 251.22 Fishery for American lobster (Homarus Americanus) in the Gulf of Maine.

[40 FR 43734, Sept. 23, 1975]

§ 251.23 Fishery for salmon in Washington, Oregon, and California.

[40 FR 43734, Sept. 23, 1975]

§ 251.24 Fishery for king crab in Alaska.

[40 FR 43508, Sept. 22, 1975]

§ 251.25 Fishery for surf clams.

[42 FR 35854, July 12, 1977]

§ 251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder).

[44 FR 4495, Jan. 22, 1979]

PART 253—COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT

Sec.
253.1 Definitions.
253.2 Interpretation of the authorization.
253.3 General provisions.
253.4 Use of funds.
253.5 Environment.
253.6 Assurances.

AUTHORITY: Sec. 8, Commercial Fisheries Research and Development Act of 1964, 78 Stat. (16 U.S.C. 779a-779f), as modified by Reorganization Plan No. 4 of 1970, effective October 3, 1970 (35 FR 15627).

SOURCE: 41 FR 55534, Dec. 21, 1976, unless otherwise noted.

§ 253.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Secretary.* The Secretary of Commerce or his authorized representatives.

(b) *Act.* The Commercial Fisheries Research and Development Act of 1964, Pub. L. 88-309, 78 Stat. 197, as amended by Pub. L. 90-551, 87 Stat. 957, Pub. L. 92-590, 86 Stat. 1303, and Pub. L. 94-485, 90 Stat. 2326 (16 U.S.C. 779 et seq.).

(c) *Grantee.* A State agency participating in a grant-in-aid award with the Secretary.

(d) *Application SF-424.* A description of the work to be accomplished, including plans, specification, and estimates, and such other information as may be required by the Secretary.

(e) *Grant-in-aid award.* A written agreement for research and development activities to be carried on as provided by the Act and these regulations. Such award shall set forth the terms and conditions binding upon the grantee and the Secretary, including the objectives, procedures, costs, the award period, and such other provisions as may be appropriate.

(f) *Aquatic plants and animals.* All animals and plants growing or living in or upon water, including finfish, shellfish, and other marine invertebrates, fur seals, whales and other marine mammals, frogs, turtles, and algae.

(g) *Commercial fisheries resources.* Any aquatic plant or animal available or potentially available for harvesting with the primary intent of commercial use as either raw or manufactured products.

§ 253.2 Interpretation of the authorization.

The terms used in the Act to describe the authorization to the Secretary for program and apportionment purposes are construed to be limited to the meanings ascribed in this section.

(a) *Research and development.* Thewords "research and development" mean program of work, including construction and acquisition, designed to acquire knowledge of commercial fisheries resources and their environment, and to develop and apply methods and techniques to enhance such commercial fisheries resources including their harvest, conservation and utilization.

(b) *Raw fish harvested by domestic commercial fishermen and received within a State.* The words "raw fish harvested by domestic commercial fishermen and received within a State" mean living aquatic plants and animals harvested by individuals, associations, partnerships or corporations resident in and authorized to do business in any State and engaged in harvesting of commercial fisheries resources or the processing and manufacturing of products therefrom. Aquatic plants and animals are received within a State when transferred from a catcher vessel within the jurisdiction of a State or permanently removed from a fish production facility.

(c) *Manufactured and processed fishery merchandise.* The words "manufactured and processed fishery merchandise" means commercial fisheries resources or parts thereof after undergoing a change(s) contributing to or achieving a condition of readiness for sale.

(d) *Developing a new commercial fishery.* The words "developing a new commercial fishery" mean activities designed to assist the commercial fishing industry by developing and evaluating methods for the harvest, utilization, and conservation of commercial fisheries resources not commonly utilized.

(e) *Commercial fishery failure due to a resource disaster arising from natural or undetermined causes.* The words "commercial fishery failure to a resource disaster arising from natural or undetermined causes" mean a serious disruption of a commercial fisheries resource affecting present or future productivity. It does not include inability to sell raw fish or manufactured and processed fishery merchandise or compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

(f) *State.* The word "State" means the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

§ 253.3 General provisions.

(a) *Designation of State agency.* The Governor of each State shall notify the Secretary which agency of the State government is authorized under its laws to regulate commercial fisheries and is designated to submit applications and to enter into grant-in-aid awards. An official of such agency shall certify as to the official(s) authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(b) *Application.* (1) An application (SF-424) for Federal assistance may be submitted for a State's overall program or for each proposed project for approval by the Secretary. An approved application is the obligating document for Federal funds.

(2) Applications utilizing an allocation of State funds additional to amounts previously allocated by the State for commercial fishery research and development activities shall be preferred over applications utilizing an allocation of State funds which does not involve an increase of State funds dedicated to commercial fishery research and development programs. No application which involves a reduction of State funds previously dedicated to commercial fishery research development will be approved.

(c) *Grant-in-aid award.* (1) After the Secretary has approved an application, activities to be undertaken by the grantee shall be evidenced by a grant-in-aid award (NOAA Form 36-16) executed by the grantee and the Secretary. Such awards may be amended by mutual consent of the parties.

(2) The grant-in-aid award shall contain applicable provisions as required by Federal law and regulations. These provisions are identified in the Grant-in-Aid Handbook, NOAA Handbook No. 22, the most recent version of which may be obtained from the Director, National Marine Fisheries Service.

(d) *Prosecution of work.* (1) The prosecution of work by the grantee shall be performed in a manner acceptable to the Secretary. Unsatisfactory performance shall be cause for the Secretary to withhold payments. Grant-in-aid awards may be terminated or suspended upon determination by the Secretary that satisfactory progress has not been maintained.

(2) All work shall be performed in accordance with applicable State laws except when such laws are in conflict with Federal laws or regulations in which case such Federal law or regulations shall prevail.

(e) *Economy and efficiency of operation.* No grant-in-aid award shall be executed until the grantee has shown to the satisfaction of the Secretary that appropriate and adequate means shall be employed to achieve economy and efficiency, including the avoidance of undesirable duplication, in the completion of a project.

(Approved by the Office of Management and Budget under control number 0648-0102 is pending)

[41 FR 55534, Dec. 21, 1976, as amended at 48 FR 57302, Dec. 29, 1983]

§ 253.4 Use of funds.

(a) *Apportionment of subsection 4(a) funds.* (1) On October 1 of each year, or as soon thereafter as practicable, the Secretary shall notify the respective States of the amount of funds authorized under subsection 4(a) of the Act and apportioned to each State under subsection 5(a) of the Act. Funds appropriated under the Act shall remain available until expended to carry out the purposes of this authorization as determined by the Secretary.

(2) Any State which is unable to use any or all of the funds apportioned to it may voluntarily release all or any part of such apportioned funds. Such release must be in writing and signed by the State official in charge of the agency designated under § 253.3(a) of these regulations or some other appropriate State official. Any apportioned funds released by a State may be made available by the Secretary to any other State, to supplement the funds apportioned to such other State in the fiscal year in which the released funds were apportioned, when the Secretary determines that such State is able to make prompt and effective use of such funds to carry out the purpose of the Act.

(b) *Use of authorized funds for commercial fisheries resource disaster.* (1) The Secretary shall cause to be published in the FEDERAL REGISTER a notice that a commercial fisheries resource disaster exists at the time such a finding is made.

(2) After such publication, Federal funds may be used for 100 percent of the cost of restoration of commercial fisheries resources if all the funds are obtained from appropriations authorized under subsection 4(b) of the Act.

(c) *Use of funds for developing a new commercial fishery.* (1) Applications related to the development of a new commercial fishery may be approved only after the Secretary determines that such applications will reasonably accomplish the purpose of developing a new commercial fishery.

(2) The Secretary may finance up to 100 percent of the cost of developing a new commercial fishery.

§ 253.5 Environment.

Projects shall be performed in such manner as to be consistent with the policies set forth in the National Environmental Policy Act of 1969, as amended by Pub. L. 94-83 (89 Stat. 424).

§ 253.6 Assurances.

The State must assure and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in ac-

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cordance with Federal Management Circular 74-7.

PART 254—CONTROL OR ELIMINATION OF JELLYFISH

Sec.

254.1 Definitions.
254.2 Funding priorities.
254.3 General provisions.
254.4 Availability of funds.
254.5 Use of funds.
254.6 Environment.
254.7 Water pollution control.
254.8 New work requirement.

AUTHORITY: Secs. 1-5, 80 Stat. 1149; 16 U.S.C. 1201-1205, as modified by Reorg. Plan No. 4, of 1970.

SOURCE: 36 FR 10738, June 2, 1971, unless otherwise noted.

§ 254.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Secretary.* The Secretary of Commerce or his authorized representatives.

(b) *Act.* Pub. L. 89-720, 80 Stat. 1149, as amended by Pub. L. 91-451, 84 Stat. 922 (16 U.S.C. 1201 et seq.).

(c) *State.* Any coastal State of the United States and the Commonwealth of Puerto Rico.

(d) *State agency.* The department(s), division(s), or commission(s) of a State empowered under its laws to manage or administer fish and shellfish resources or water-based recreation programs.

(e) *Cooperator.* A State agency participating in a cooperative agreement with the Secretary.

(f) *Coastal waters.* For the purpose of this Act, coastal waters include all or part of the mouth of a navigable or interstate stream or body of water, bays, sounds, lagoons, channels, estuaries, and other such waters.

(g) *Jellyfish.* Commonly known as "sea nettle," belonging to the phylum Coelenterata.

(h) *Other such pests.* All other species belonging to the phyla Coelenterata and Ctenophora which adversely affect fish, shellfish or water-based recreation.

(i) *Floating seaweed.* Marine plants including marine algae.

(j) *Project proposal.* A description of work to be accomplished, including objectives, procedures, cost, location, and time required for completion, and such other information as may be required by the Secretary.

(k) *Cooperative agreement.* The contract for research, control, or elimination of jellyfish and other such pests or the control of floating seaweed to be carried on as provided by the Act and these regulations. Such agreement shall set forth the terms and conditions binding upon the cooperator and the Secretary, including the objectives, procedures, costs, the term of the agreement, and such other provisions as may be appropriate.

§ 254.2 Funding priorities.

Funding priorities shall be given to those activities having the greatest potential for controlling or eliminating jellyfish and other such pests for the purposes of conserving and protecting the fish and shellfish resources in coastal waters.

§ 254.3 General provisions.

(a) *Designation of State agency.* A State agency authorized under its laws to manage or administer fish or shellfish resources or water-based recreational programs may submit project proposals and enter into cooperative agreements with the Secretary.

(b) *Project proposal.* (1) A project proposal shall be submitted for each proposed project for approval by the Secretary. An approved project proposal shall not be binding on the parties until incorporated in a cooperative agreement.

(2) Project proposals utilizing an allocation of State funds additional to amounts previously allocated by the State for the control or elimination of jellyfish and other such pests in coastal waters and for research on control of floating seaweed in such waters shall be preferred over project proposals utilizing an allocation of State funds which do not involve an increase of State funds dedicated to such programs. No project proposal which involves a reduction of State funds previously dedicated to such programs will be approved.

(c) *Cooperative agreement.* (1) After the Secretary has approved a project proposal, activities to be undertaken by the cooperator and the obligation of Federal funds shall be evidence by a cooperative agreement executed by the cooperator and the Secretary. Such agreement may be amended by mutual consent of the parties.

(2) The cooperative agreement shall contain applicable provisions as required by Federal law and regulations. These provisions are identified in the Federal Aid for Fisheries Handbook, the most recent version of which may be obtained from the Director, National Marine Fisheries Service.

(d) *Prosecution of work.* (1) The prosecution of work by the cooperator shall be performed in a manner acceptable to the Secretary. Unsatisfactory performance shall be cause for the Secretary to withhold payments. Cooperative agreements may be terminated or suspended upon determination by the Secretary that satisfactory progress has not been maintained.

(2) All work shall be performed in accordance with applicable State laws except when such laws are in conflict with Federal laws or regulations, in which case such Federal law or regulations shall prevail.

(e) *Economy and efficiency of operations.* No cooperative agreement shall be executed until the cooperator has shown to the satisfaction of the Secretary that appropriate and adequate means shall be employed to achieve economy and efficiency, including the avoidance of undesirable duplication, in the completion of a project.

(f) *Subcontracts.* In the performance of work under a cooperative agreement, subcontracts shall be solicited and awarded according to the laws and regulations of the State provided the Secretary is satisfied that adequate steps have been taken to insure economical and efficient services and impartial selection of subcontractors.

§ 254.4 Availability of funds.

Language appearing in Appropriation Acts providing funds for this program will govern the period during which the funds may be obligated.

§ 254.5 Use of funds.

(a) *Apportionment and obligation of Jellyfish funds.* On July 1 of each year, or as soon thereafter as practicable, the Secretary shall notify the States through publication in the FEDERAL REGISTER of the amount of funds authorized under the Act to carry out the purpose of the Act. Federal funds are tentatively made available for obligation for a specified period within the fiscal year in which appropriated. If the total or any portion thereof is unobligated at the end of this allocation period, such funds may be withdrawn and reallocated for obligation.

(b) *Administrative funds.* The National Marine Fisheries Service will finance its administrative cost from the appropriation made available by the Act. This administrative cost shall not exceed eight (8) percent of the appropriation.

(c) *Level of Federal funding.* Cost of activities under cooperative agreements shall be borne equally by the Federal Government and by the Cooperator. Eligible Cooperator matching funds are those available to the Cooperator agency from any non-Federal source.

§ 254.6 Environment.

Projects contracted for shall be performed in such a manner so as to be consistent with the policies set forth in the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.).

§ 254.7 Water pollution control.

In the performance of work under a cooperative agreement the State shall take such action as is necessary to avoid pollution of water as a direct or indirect result of a contract activity. Water quality must be maintained at a level consistent with applicable water quality standards.

§ 254.8 New work requirement.

Project proposals shall set forth undertakings which constitute activities in addition to current programs. It is desirable that projects represent entirely new undertakings. However, expansion of existing programs for control or elimination of jellyfish and other such pests in coastal waters and research on control of floating seaweed in such waters is satisfactory provided such existing programs are not reduced insofar as the cooperator's financial participation is concerned.

PART 255—FISHERIES OBLIGATION GUARANTEE PROGRAM

Sec.

255.1 Purpose.
255.2 Definitions.
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255.5 Project requirements.
255.6 Guarantee limits, debt maturities, and interest rates.
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255.9 Financial requirements.
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255.11 Miscellaneous requirements.
255.12 Fees.
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255.14 Default/liquidation of collateral.
255.15 Program guidelines.
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AUTHORITY: Title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279, Pub. L. 96-561) and Reorganization Plan No. 4 of 1970 (86 Stat. 909).

SOURCE: 47 FR 57435, Dec. 23, 1982, unless otherwise noted.

§ 255.1 Purpose.

These rules govern guaranteed financing for fishing vessels and fisheries shoreside facilities under the provisions of Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271 through 1279), as amended by the American Fisheries Promotion Act (Pub. L. 96-561). The purpose of the Fisheries Obligation Guarantee Program is to make long-term financing available to the United States fishing industry by providing a U.S. Government guarantee of repayment of the debt portion of fishing vessel and shoreside facility construction, reconstruction, reconditioning, or (where eligible) purchasing costs.

§ 255.2 Definitions.

(a) *Act* means Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271 through 1279).

(b) *Actual cost* means the total amount paid or owed by an obligor for the construction, reconstruction, reconditioning or (where eligible) purchase of fishing vessels or fisheries shoreside facilities.

(c) *Agency* means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) *Chief, Financial Services Division* means the Chief, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his designee.

(e) *Citizen of the Northern Mariana Islands* means:

(1) Any individual who is a citizen of the Northern Mariana Islands (and qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands);

(2) Any corporation formed under the laws of the Northern Mariana Islands, if at least 75 percent of it is owned by individuals specified in paragraph (e)(1) of this section or citizens or nationals of the United States; or

(3) Any partnership or other form of association, if all the general partners, and at least 75 percent of all partners, are individuals specified in paragraph (e)(1) of this section or citizens or nationals of the United States.

(f) *Citizen or national of the United States* means:

(1) Any individual who is a citizen of the Northern Mariana Islands or a citizen or national of the United States of America;

(2) Any corporation, if at least 75 percent of it is owned by citizens of the Northern Mariana Islands or by citizens or nationals of the United States of America within the meaning of the provisions of section 2 of the Shipping Act, 1916 (46 U.S.C. 802); or

(3) Any partnership or association, if all the general partners, and at least 75 percent of all partners, are citizens of the Northern Mariana Islands or citizens or nationals of the United States of America.

(g) *Conditional fishery* means any fishery which has been declared as conditional under 50 CFR Part 251.

(h) *Contribute to the development of the U.S. fishing industry* means any project which:

(1) Enables fishing vessels to reduce harvests in conditional fisheries;

(2) Applies new technology;

(3) Makes any fisheries operation afloat or ashore more efficient, productive, or competitive;

(4) Has a potential for increasing fisheries exports;

(5) Aids in the development of an underutilized fishery; or

(6) In any other demonstrable way, contributes to the stability, growth, productivity, or development of the U.S. fishing industry.

(i) *Depreciated actual cost* means the actual cost of a fishing vessel or fisheries shoreside facility, depreciated (excluding land, which is not depreciable) on a straightline basis at one-year intervals over the vessel or facility's economically useful life, less a 10 percent salvage value.

(j) *Economically useful life* means the period during which the fishing vessel or fisheries shoreside facility, with proper maintenance, will remain economically productive.

(k) *Fish* means all forms of aquatic animal and plant life other than marine mammals and birds.

(l) *Fisheries shoreside facility* means any land, or structure or equipment on land, used for unloading, receiving, holding, processing, or distributing fish of every kind (including fish caught as a result of commercial passenger carrying fishing operations). This term does not include:

(1) Office furniture, equipment, or supplies;

(2) Any rolling equipment which will be used outside the primary production site;

(3) Any other non-fixed equipment which should be financed either from working capital or by the proceeds of short-term financing from other sources; or

(4) Any facility where more than 49 percent of the gross income is projected to be from the retail selling of fish or fisheries products or from anything else other than the unloading, receiving, holding, processing, or distribution of fish.

(m) *Fishing vessel* means any vessel, boat, ship, or other craft which is documented under United States law and is used for, equipped to be used for, or of a type which is normally used for commercial fishing (including commercial passenger carrying fishing vessels) or aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing (including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing).

(n) *Obligee* means the party who lends the proceeds of a guaranteed obligation or invests in a guaranteed obligation.

(o) *Obligor* means the party who borrows the proceeds of a guaranteed obligation.

(p) *Program* means the Fisheries Obligation Guarantee Program under Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271 through 1279).

(q) *Project* means a construction, reconstruction, reconditioning, or (where eligible) purchase of fishing vessels or fisheries shoreside facilities, whose financing will be guaranteed under the Program.

(r) *Reconstruction or reconditioning* means any improvements of used fishing vessels or fisheries shoreside facilities provided that:

(1) At least 75 percent of improvement expenditures are capital, rather than expense, items;

(2) The improved vessel or facility will have an economically useful life of at least 10 years (or longer if the term of the proposed financing for which a guarantee is sought is longer), but specific equipment involved in a reconstruction or reconditioning may individually have economically useful lives of less than 10 years;

(3) The improved vessel or facility will be fit and sufficient for its intended operation; and

(4) The improvement project involves more than routine repair or maintenance.

(s) *Secretary of Commerce* means the Secretary of Commerce, or his designee.

(t) *State* means any State of the United States of America, the District of Columbia, the Commonwealth of

Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, any other commonwealth, territory, or possession of the United States of America, or any political subdivision of any of the above.

(u) *Underutilized fishery* means:

(1) Any species of fish for which foreign fishing within the U.S. Fishery Conservation Zone is permitted or any species of fish within or without such zone for which a demonstration can be made that such species is not fully utilized by U.S. fishing vessels (including species designated as underutilized by states under whose fishery management jurisdiction those species fall); or

(2) For fisheries shoreside facilities, any facility which will utilize the species defined in paragraph (u)(1) of this section, or any facility for which a demonstration can be made that existing fisheries shoreside facilities are inadequate to fully, properly, or efficiently utilize fishing vessel production, regardless of the species involved.

§ 255.3 Applications.

Applications for a program guarantee should be submitted to the Agency office listed below which corresponds to the region in which the proposed project will operate:

National Marine Fisheries Service, Northeast Region, Financial Services Branch, Post Office Building, Box 1109, Gloucester, Massachusetts 01930 (617) 281-3600

National Marine Fisheries Service, Northwest Region, Financial Services Branch, 7600 Sand Point Way, NE., Bin C15700, Seattle, Washington 98115 (206) 527-6122

National Marine Fisheries Service, Southwest Region, Financial Services Branch, 9450 Koger Blvd., Duval Bldg., St. Petersburg, Florida 33702 (813) 893-3148

National Marine Fisheries Service, Southwest Region, Financial Services Branch, 300 South Ferry Street, Terminal Island, California 90731 (213) 548-2478

Application forms are obtainable from the offices listed above. *All potential applicants should discuss their project with a regional Program officer before submitting an application.*

§ 255.4 Citizenship requirements.

Any citizen or national of the United States is eligible to apply for a guarantee under the Program.

(Approved by the Office of Management and Budget under control number 0648-0012 is pending)

[47 FR 57435, Dec. 23, 1982, as amended at 48 FR 57302, Dec. 29, 1983]

§ 255.5 Project requirements.

(a) *Qualifications for program guarantees.* Program guarantees are availale for financings (including reimbursement of obligors for expenditures previously made) for the construction, reconstruction, reconditioning, or (where eligible) purchase of any fishing vessel documented under United States law or any fisheries shoreside facility located anywhere in any State of the United States.

(b) *Used fishing vessels and fisheries shoreside facilities.* Financing of the purchase cost of any used fishing vessel or fisheries shoreside facility may be guaranteed only if the vessel or facility will (1) aid in the development of an underutilized fishery or (2) contribute to the development of the U.S. fishing industry and be reconstructed or reconditioned in the United States.

(c) *Conditional fisheries.* Program guarantees are available for financing the construction of a new fishing vessel which will operate in a conditional fishery, or which will result in the transfer of a used vessel into operation in a conditional fishery, only if one of the following conditions is met:

(1) The vessel whose financing is guaranteed (despite the fact that it will operate in a conditional fishery) is also fully equipped for, and fully capable of, operating in an underutilized fishery;

(2) The vessel involved will replace a vessel of comparable fishing capacity which had operated in the conditional fishery prior to the designation of such fishery as conditional;

(3) The vessel whose financing is guaranteed was contracted for prior to the designation of the fishery in which it will be operated as conditional;

(4) The financing to be guaranteed will be used for the reconstruction or reconditioning of a vessel already operating in the conditional fishery; or

(5) The application for Program guarantee had been submitted prior to

the designation as conditional of the fishery in which the vessel will be operated. See 50 CFR Part 251 for those fisheries which are designated as conditional.

(d) *Eligibility for vessels or facilities which will be used in underutilized fisheries.* In order for the financing of a fishing vessel or fisheries shoreside facility to be eligible for a Program guarantee because such vessel or facility will be used in an underutilized fishery (including the underutilized fisheries aspects of the conditional fisheries requirements), such vessel or facility must be fully equipped for, and be fully capable of, operating in an underutilized fishery. This determination will be made by the Chief, Financial Services Division, at the time of Program guarantee approval. The Obligor will be required to execute an agreement to operate the vessel in the underutilized fishery.

§ 255.6 Guarantee limits, debt maturities, and interest rates.

(a) *Actual cost.* In addition to the cost of construction, reconstruction, reconditioning, or (where eligible) purchase of a fishing vessel or fisheries shoreside facility, the actual cost of such a vessel or facility may also include:

(1) Reasonable architectural, engineering, or inspection expenses incurred with regard to the vessel or facility before completion;

(2) Reasonable expenses for interest on debt incurred to finance the vessel or facility during its construction, reconstruction, or reconditioning;

(3) The reasonable expenses of any contract for consulting services to assess the financial, economic, or technical feasibility of a vessel or facility or its fitness and sufficiency, *if such services are required by the Chief, Financial Services Division, as a precondition to a decision about the approval of a guarantee.*

(4) Dredging or other costs deemed by the Program to be necessary. Actual costs do not include any other expenses which cannot be capitalized under generally accepted accounting principles (except acceptable items for repair or maintenance *associated with* reconstruction or reconditioning).

(b) *Guarantee limits.* The Program may guarantee financing representing up to 87½ percent of the actual cost or depreciated actual cost of the construction, reconstruction, reconditioning, or (where eligible) purchase of fishing vessels or fisheries shoreside facilities. Consideration of the risk involved may, however, result in a guarantee approval for less than 87½ percent of actual cost.

(c) *Debt maturities.* Debt maturities on obligations guaranteed under this Program may not exceed 25 years. No debt maturity may, however, exceed the economically useful life of the fishing vessel or fisheries shoreside facility involved. The economically useful life will be determined by the Chief, Financial Services Division, on a case-by-case basis.

(1) *Fishing vessels.* Generally, 25-year maturities for obligations on fishing vessels guaranteed under the Program will be restricted to financings for the construction of large and expensive fishing vessels with economically useful lives supporting a 25-year maturity. Debt maturities on guaranteed obligations for financing smaller and less expensive fishing vessels will generally be restricted to 15-20 years (or less, if their economically useful lives are less or if risk considerations require less).

(2) *Fisheries shoreside facilities.* Debt maturities on guaranteed obligations for financing major fisheries shoreside facilities construction Projects may generally be up to 25 years if the economically useful life of the facility is at least that long. If a major facility Project involves a significant amount of financing for fixed equipment which has a shorter economically useful life than that of the structure which houses it, an acceptable maturity date for the whole Project will be determined by a weighted average of the differing economically useful lives involved or by such other method as the Chief, Financial Services Division, deems appropriate (including separate financings if that is warranted). More minor facilities Projects will generally be restricted to debt maturities of 15-20 years (or less, if their economically

useful lives are less or if risk considerations require less).

(3) *Reconstruction and reconditioning.* The debt maturity of guaranteed financing for reconstruction or reconditioning will not extend beyond the economically useful life of the vessel or facility in its reconditioned or reconstructed state. The economically useful life of a reconstructed or reconditioned vessel or facility will be determined by the Chief, Financial Services Division, on a case-by-case basis.

(d) *Interest rates.* Interest rates on obligations to be guaranteed under the Program shall be approved by the Program and shall not exceed the rate determined to be reasonable, taking into account the range of interest rates prevailing in the private market for similar transactions.

(e) *Refinancing.* Refinancings may be guaranteed if the financing which is being refinanced would itself have been eligible for a Program guarantee.

(f) *Foreclosure purchase.* The financing of the purchase price of a vessel or facility whose previous financing was guaranteed under the Program and which is then sold at a foreclosure sale (or sold subsequent to the foreclosure sale after the Program purchases the vessel or facility at foreclosure) may be guaranteed under the Program.

§ 255.7 Fishing industry ability and experience.

(a) *Owner-operated projects.* Fishing vessel and fisheries shoreside facility owners must possess the necessary ability, experience, resources, character, reputation, and other qualifications to operate properly and maintain the vessel or facility and protect the Program against undue risk. Owners who cannot demonstrate a successful background of ability and experience *in the fishing industry* of an appropriate duration, degree, and nature considering the type and magnitude of the Project for which financing is being sought will not be eligible for a Program guarantee. Under appropriate circumstances, and at the Program's sole discretion, the lessee of a financing lease may be considered as an "owner" for the purposes of meeting the requirements of this section.

(b) *Equity contributors.* Equity contributors without this demonstrated fishing industry ability and experience may be allowed to own a portion, not to exceed 49 percent, of the vessel or facility for which guaranteed financing is sought only if:

(1) At least 51 percent of the vessel or facility is owned by persons who do possess the requisite fishing industry ability and experience, and such persons have made a full pro-rata equity contribution, are severally 100 percent liable for the debt obligation, and are responsible for the management and operation of the Project; and

(2) The vessel or facility being financed is so large and so expensive as to be beyond the normal equity funding capability of an owner with the requisite fishing industry ability and experience.

(c) *Limitation of liability.* In no event will equity contributors be permitted to limit their liability to the amount of their original equity contribution. Each equity contributor shall, additionally, be jointly and severally liable for *at least* the amount of the guaranteed debt obligation which corresponds to the percentage of such equity contributor's ownership interest in the vessel or facility. This limitation of liability provision shall apply to all equity contributors in closely-held corporations, partnerships, and joint ventures.

§ 255.8 Economic soundness.

(a) *Income and expense projections.* Conservative income and expense projections must reasonably assure adequate net earnings from operation of the vessel or facility. This projection must allow the prospective accumulation of net retained earnings sufficient to provide for operational contingencies, to establish a reasonable reserve for depreciation, and to protect the Project against cyclical economic conditions in the fishing industry.

(b) *Underutilized fisheries.* An economic soundness test for vessels or facilities to be operated in underutilized fisheries that is less stringent than the requirements for vessels or facilities to be operated in more developed fisheries may, at the Program's discretion, be applied. This less stringent economic soundness test will, however, not extend to factors beyond the uncertainty of cash-flow projections in an underutilized fishery. Moreover, the Program will otherwise only guarantee financing for vessels or facilities which are to operate in the *initial* development stages of an underutilized fishery if the owners of those vessels or facilities adequately share with the Program a higher degree than ordinary of the greater financial risk. Demonstrated fisheries ability and experience requirements, financial condition requirements, and collateral requirements all may be stringent when the vessel or facility financed is to operate in the *initial* development stages of an underutilized fishery rather than in a more developed fishery. Owners of vessels or facilities which are to operate in the *initial* development stages of an underutilized fishery must possess *exceptional* fisheries ability and experience.

(c) *Consultant services.* The Program may require, as a pre-condition to a decision about approving a guarantee, that expert consulting services be provided. This requirement will generally be restricted to situations where a guarantee is sought for financing for larger and more expensive vessels to be operated in underutilized fisheries, or for larger and more expensive fisheries shoreside facilities, but may also be imposed where a guarantee is sought for financing for larger and more expensive vessels to be operated in more developed fisheries. The expert consulting services may be required to assist in assessing economic, technical, and financial feasibility, property design and engineering or other factors. When such a requirement is imposed, the Program (under conditions acceptable to the Obligor) will choose the consultant and specify the consultant's duties, and the Obligor will reimburse the Program for the Program's payment of the consultant's services. No approved application will be closed until satisfactory arrangements have been made for such reimbursement. If an application is declined, the 25 percent commitment fee may be used by the Program for such reimbursement. *When such a requirement is imposed by the Program*, the cost of such consulting services may be included in the actual cost of the Project (if approved) for purposes of determining the amount of the guarantee.

§ 255.9 Financial requirements.

(a) *Working capital.* The vessel or facility owner must be in sufficiently sound financial condition to meet obligations, to continue to operate successfully the vessel or facility and all other business operations, and to protect the Program against undue risk. Audited financial statements will ordinarily be required in applications for guaranteed financing for large fisheries shoreside facilities Projects, and may be required in applications for other purposes. Working capital (current assets minus current liabilities) requirements will be established on a case-by-case basis, but must in all cases be sufficient to fund vessel or facility operations until the vessel or facility can generate sufficient income to do so. Working capital must be sufficient not only for the Project for which guaranteed financing is sought, but for all other affiliated projects, businesses, or interests. The *minimum* working capital from *equity* sources must in the case of fishing vessel construction equal at least 8 percent of the total capitalizable cost of the vessel. In the case of fisheries shoreside facility construction, the minimum working capital required from equity sources will be determined on a case-by-case basis, but will ordinarily be considerably greater than that required for fishing vessels. Minimum working capital requirements for reconstruction, reconditioning, and (where eligible) purchasing Projects will be decided on a case-by-case basis. *Additional* working capital may be required on a case-by-case basis and may, at the Program's discretion, consist of readily convertible investments, other assets readily capable of being used to generate working capital, lines or letters of credit, or the presence of a co-maker or guarantor with sufficient financial resources.

(b) *Equity.* No financing shall be approved for a guarantee unless the Obligor can demonstrate that, at the time of the financing's closing, *minimum* capital provided from *equity* sources is equal to at least the total of the following:

(1) 12½ percent of the total capitalizable cost of the construction, reconstruction, reconditioning, or (where eligible) purchase of the vessel or facility (the downpayment);

(2) The Program's first-year guarantee fee;

(3) The first year's premium for all required insurance;

(4) The minimum working capital requirement; and

(5) Such other *additional* amounts as the Program may deem necessary on a case-by-case basis.

(c) *Guarantees of financing for fisheries shoreside facilities or processing vessels.* Applicants for guarantees for financing of fisheries shoreside facilities and processing vessels will be required to obtain acceptable lines or letters of credit (some may be required to be in the form of irrevocable letters of credit) for all foreseeable inventory financing needs (beyond those to be met by the working capital available from equity sources) during at least the first year of operation of the facility or vessel.

§ 255.10 Collateral.

(a) *Mortgage.* The vessel of facility for which the financing is to be guaranteed should always be collateral for the Program guarantee. This property ordinarily will be secured by a first mortgage or, and in the case of vessels, by a first preferred ship mortgage in favor of the Secretary of Commerce. In the case of equipment, the security interest may be perfected by a filing in accordance with the Uniform Commercial Code and/or by the recording of any form of security agreement or mortgage (e.g. chattel mortgage) necessary in a jurisdiction where the Uniform Commercial Code has not been adopted.

(b) *Guarantees.* If, in considering the risk involved in guaranteeing a financing, net worth is a significant factor relied on to offset other risks, such net worth must ordinarily be pledged as additional collateral for the program guarantee (an irrevocable letter of credit may be substituted under terms and conditions acceptable to the Program). If a closely-held corporation will be the Obligor, all major stockholders will ordinarily be required to provide their personal guarantees as additional collateral for the Program guarantee. If a subsidiary corporation, without substantial assets in addition to the vessel or facility is Obligor, the parent corporation will ordinarily be required to provide its guarantee as additional collateral for the Program guarantee. Personal or entity guarantees will always be required as additional collateral for Program guarantees where necessary to assure that the principal parties in interest, who ultimately stand most to benefit from the Project, are held accountable for the performance and operation of the Project.

(c) *Limitation of liability.* In no instance will equity contributors be permitted to limit their liability on a guarantee only to the amount of their initial equity contribution. Equity contributors will, additionally, be required to be *at least* jointly and severally liable for the amount of the guaranteed obligation which corresponds to the percentage of their ownership interest in the Project. Such equity contributors may, however, be required to be liable for more than such percentage. Under appropriate circumstances, and at the Program's sole discretion, the lessor of a financing lease may be treated differently.

(d) *Dual-use Capital Construction Fund agreement.* In the case of fishing vessels, the Program may require, as additional collateral, execution of a dual-use Capital Construction Fund Program agreement, and annual deposit into such fund (on a tax-deferred basis) of a reasonable portion of the net income of the vessel. Dual-use agreements provide for all the normal benefits of the Capital Construction Fund Program, but also give the Program control of withdrawals from a Capital Construction Fund and allow the Program to use these reserved funds, in the event of a default, to repay the debt obligation involved in the guaranteed financing. This control insures that the Obligor will have an emergency reserve of funds, as well as a reserve for reconditioning of the vessel. At the Program's discretion, reserved funds not required in connection with the vessel for which financing is guaranteed may be withdrawn for other qualified purposes.

(e) *Reconstruction or reconditioning.* The Chief, Financial Services Division, may, in his discretion, require such additional security or collateral as may be necessary to secure the Program's interest.

§ 255.11 Miscellaneous requirements.

(a) *Insurance.* All vessels and facilities for which financing is guaranteed shall be continuously insured during the term of the Program guarantee with such casualty, liability, breach of warranty, keyman, title, and/or other insurance in such form and amounts as the Program deems necessary. The Program shall ordinarily be the sole loss payee on all such insurances. No such insurances may be cancelled without 20 days prior written notice to the Chief, Financial Services Division. The Program's standard endorsements regarding the insured's breach of warranties, negligence, omission, etc., as well as an admission of seaworthiness or property soundness, shall be a part of all such insurances.

(b) *Bids and project costs.* If application for Program guarantee is first made before a contract for the vessel or facility to be financed is executed, not less than three responsive bids for the vessel or facility will ordinarily be required. Ordinarily, the lowest bid will be accepted, unless the Obligor and the Program agree that it is advisable to accept a higher bid. If application for a Program guarantee is first made after a contract for the vessel or facility has been executed, the Program may not guarantee a financing in an amount higher than would fairly and reasonably have resulted if competitive bidding had occurred. All applicants are encouraged to obtain at least three competitive bids, and applicants without such bids who first apply after a contract has been executed may be required by the Program to establish, at their expense, independent confirmation acceptable to the Program that the contract cost is both fair and reasonable. Approvals and commitments for Program guarantees will be based on the initial contract cost, and contract cost overruns may or may not, at the sole discretion of the Program, be added to the amount of the guaranteed financing.

(c) *Property inspection.* The Program will require inspection and approval of all vessels and facilities before providing a financing guarantee. For all guarantees involving financings of more than $500,000, the Program, where appropriate, will require inspection and approval by certified architects or engineers (either marine or real property architects or engineers). For program guarantees for financing of less than $500,000, the required property inspection and approval may, at the Program's discretion, be made by any competent authority acceptable to the Program. The required property inspection and approval should involve assessment of at least the following:

(1) Adequacy of workmanship;

(2) Fitness and sufficiency for the intended purpose;

(3) Reasonableness of cost;

(4) Compliance with basic contract specifications regarding the property; and

(5) The identification and recommended resolution of any significant deficiencies.

Where financing for used vessels or facilities is to be guaranteed, the inspection and approval assessment will be adjusted to provide the normal assurances associated with financing the acquisition of used property. Issuance of guarantees of financings involving more than $5,000,000 may be conditioned upon additional requirements regarding the inspection and approval of a vessel or facility. Program guarantees of financings involving more than $5,000,000 should always be conditioned on comprehensive *on site* inspection, by certified architects and engineers, and inspection of the vessel or facility to be financed at appropriate times during construction, reconstruction, or reconditioning. The Program may require American Bureau of Shipping *classification* requirements for all Program guarantees involving fishing vessels costing more than

$5,000,000, and applicants are urged presently to consider voluntary use of the American Bureau of Shipping *classification* program for the construction of all fishing vessels costing over $5,000,000. All required property inspections and approvals must be conducted by competent and impartial authorities acceptable to the Program. Architects, engineers, surveyors, or appraisers employed by contractors constructing, reconstructing, or reconditioning a vessel or facility, or by parties selling used vessels or facilities, are not acceptable for meeting this requirement. The cost of inspection and approval services in connection with a vessel or facility may be included in the actual cost of the vessel or facility and, thus, guaranteed by the Program.

(d) *Maintenance reviews.* All vessels and facilities for which financing is guaranteed under the Program shall be inspected at least once every three years by a competent and impartial authority acceptable to the Program. A full inspection report, identifying deficiencies and recommending the action necessary for their correction, will be provided to the Obligor and to the Program. Failure to provide this tri-annual inspection, or correct deficiencies identified by it, will constitute a default of the terms and conditions of mortgages securing the Program's guarantee and a cause, at the Program's discretion, for acceleration and liquidation of the debt obligation. Special property inspections may be required whenever the Program deems it necessary to preserve its collateral. All such inspections shall be at the expense of the Obligor. This requirement extends to all supplementary collateral for Program guarantees.

(e) *Terms and conditions of Program guarantees.* The Program will, on a case-by-case basis, specify in detail the precise terms and conditions prerequisite to the Program's willingness to provide a guarantee. These terms and conditions are at the Program's sole discretion, and an applicant's failure to comply with them will result in nonqualification for a Program guarantee.

(f) *Program Obligees.* The applicant may choose the Obligee to fund the debt to be guaranteed by the Program. Obligees may be any financial institution, public agency, or other party. The Program may, however, refuse to guarantee financing unless it has approved the terms and conditions of the financing (including particularly the interest rate and other amortization provisions) *before* the Obligor makes a firm commitment to an Obligee. Failure to first obtain the Program's approval may result in the Program's refusal to issue the guarantee despite the fact that the Obligor may have created a binding contract with an Obligee, abrogation of which may result in loss to the Obligor. The Program will assist those whose applications for Program guarantees are approved to gain access to the private market for appropriate financing, but only as a gratuitous service. Arrangements between the Obligor and the Obligee are a matter of private contract between those two parties, and the Program will not in any way be responsible to either for nonperformance by the other.

(g) *Closing*—(1) *Contracts.* All debt obligations and associated contractual arrangments which comprise the financing will be documented by *standard Program forms,* which may not be altered or amended in any way by insertion, deletion, or variation without prior Program approval (which will be sparingly granted).

(2) *Closing schedules.* The Program will attempt to meet the closing schedules (where reasonable) of Obligors and Obligees. The Program, however, accepts no responsibility for adverse interest-rate fluctuations, loss of commitments, or other consequences of non-compliance with Obligors' or Obligees' closing schedules. Obligors and Obligees should work closely with the Program to assure reasonable closing schedules, since internal workload and personnel considerations sometimes affect the Program's ability to meet otherwise desirable schedules.

(3) *Closing vessel financings.* The Program will attempt to close guarantees on financings involving fishing vessels with minimal services from private attorneys and/or other private contractors.

(4) *Closing shoreside facilities financings.* Closings for guarantees of fi-

nancing for fisheries shoreside facilities will require substantial services from private attorneys and/or other contractors at the expense of the Obligor. The choice of such private contractors for any portion of the closing process is subject to Program approval. Services required to be provided by private contractors may include: title searches; preparation of legal documents; actual closing, escrow, and disbursement services; and the provision of a *legal opinion* from acceptable counsel regarding the validity and binding effect of transactions, compliance with procedures specified by the Program, and other assurances.

(5) *Paying agents.* The Chief, Financial Services Division, in his discretion, may require the use of a paying agent or trustee. Where paying agents are used, Obligors or Obligees will be responsible for their cost.

§ 255.12 Fees.

(a) *Filing and commitment fees.* The Program's filing and commitment fee shall be ½ of 1 percent of the first $2,000,000 principal amount (or portion thereof) of the Program guarantee for which application is made and ¼ of 1 percent of all principal amount over $2,000,000. The fee shall be due at the time an application is submitted, and no application for guarantee shall be accepted unless the full filing and commitment fee accompanies it. The filing fee shall be 75 percent of the filing and commitment fee, and once an application for a guarantee is accepted, no portion of the filing fee shall be returned for any reason. The commitment fee shall be the remaining 25 percent of the filing and commitment fee, and shall be returnable only if a refund is requested *before* the Program issues an Approval in Principle letter or if the application is declined.

(b) *Guarantee fee.* The Agency guarantee fee shall be:

(1) For guarantees on financings not involving underutilized fisheries risks, ¾ of 1 percent of the average unpaid principal balance of the debt obligation for which the guarantee is outstanding during each year of the life of the guarantee; and

(2) For guarantees on financings involving underutilized fisheries risks, 1 percent of the average unpaid principal balance of the debt obligation for which the guarantee is outstanding during each year of the life of the guarantee.

The guarantee fee shall be due in advance based upon the financing's amortization schedule. The first annual guarantee fee shall be due at closing of the guarantee. Each subsequent annual guarantee fee shall be due on the anniversary date of the closing of the guarantee. No refund of guarantee fees shall be made regardless of the status of the financing or the guarantee during the year to which the guarantee fee relates.

(c) *Refinancing/assumption fee.* The Program's refinancing/assumption fee shall be ¼ of 1 percent of the principal amount of the debt obligation to be refinanced or assumed, and is due upon application for a guarantee for the refinancing/assumption. The refinancing/assumption fee is non-returnable regardless of the subsequent disposition of an application. The Chief, Financial Services Division, may, however, (1) waive the refinancing/assumption fee where the refinancing/assumption is primarily to protect the Program's interest or (2) charge an actual cost fee, not to exceed $1,000, where the refinancing/assumption does not substitute a wholly different obligor for the initial obligor.

(d) *Where payable.* Fees shall be paid by check mailed to: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, NBOC 1, Room 122, 11420 Rockville Pike, Rockville, Maryland 20852. Checks shall be made payable to: "NMFS/FSFF".

§ 255.13 Demands and payment.

All demands by Obligees, whose debt has been guaranteed under the provisions of this Program, for payment of all or any portion of a guaranteed obligation in default shall be made in writing to the Chief, Financial Services Division, F/UD5, 3300 Whitehaven St., NW., Washington, DC 20235, by certified mail, return receipt requested. In the event the Program does not acknowledge timely receipt of a demand alleged to have been timely made, the demander must possess evidence of the demand's timely delivery to the Program. Payment of demands shall be made within 30 days after receipt of a timely demand by the Chief, Financial Services Division. Demands may be made by Obligees' duly authorized agents or trustees.

§ 255.14 Default/liquidation of collateral.

(a) *Default.* In the event of default by an Obligor which results in the payment by the Program to an Obligee of the guaranteed debt, the Program shall ordinarily foreclose on its collateral and institute personal collection proceedings against the Obligor and the guarantors of the financing. At the Program's sole discretion, other remedies which are deemed most appropriate to protect the Program's interest may be pursued.

(b) *Liquidation of collateral.* If the Program is the highest bidder at a foreclosure sale of collateral, the Program (as the new owner of the collateral) may, in its sole discretion, subsequently complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, lease, or sell such collateral. In the event there is a willing buyer for such collateral at an amount at least equal, or almost equal, to the amount owed the Program, the Program may convey title to such collateral, upon proper payment, without competitive bidding or other contracting procedures. If there is not a willing buyer for such collateral at an amount equal, or almost equal, to the amount owed the Program, the collateral will ordinarily be disposed of by competitive bidding—unless the Program decides that it can best recover without competitive bidding. Any deficiency resulting from the Program's purchase of collateral at a foreclosure sale shall not be offset by receipts from a subsequent sale of such collateral in the event the Program purchases the collateral and sells it for an amount greater than that owed the Program; the original Obligors and guarantors of the guaranteed financing remain liable for such deficiency.

§ 255.15 Program guidelines.

The Chief, Financial Services Division, will issue Program guidelines from time to time, as the need arises, to govern national Program policy and administrative issues which are not addressed by these rules.

§ 255.16 Applicability of rules.

These rules will be applicable to all Program applications first accepted after the rules' effective date.

PART 256—FISHING VESSEL CONSTRUCTION DIFFERENTIAL SUBSIDY PROCEDURES

Sec.

256.1 Basis and purpose.
256.2 Definitions.
256.3 Eligibility requirements.
256.4 Applications.
256.5 Notice and hearing.
256.6 Subsidy contract.
256.7 Vessel operations.
256.8 Penalties.
256.9 Inspection of vessels.
256.10 Payment of subsidy.
256.11 Furnishing of information.

AUTHORITY: Sec. 10, 74 Stat. 214, as amended; 46 U.S.C. 1410.

SOURCE: 31 FR 16049, Dec. 15, 1966, unless otherwise noted.

§ 256.1 Basis and purpose.

(a) The Act of June 12, 1960 (Pub. L. 86-516), as amended and hereinafter referred to as the Act, authorizes the Secretary of the Interior to pay a subsidy for the construction of fishing vessels in shipyards of the United States.

(b) The purpose of this part is to prescribe rules and regulations governing the payment of these subsidies.

§ 256.2 Definitions.

(a) *Secretary.* The Secretary of the Interior or his authorized representative.

(b) *Administrator.* The Maritime Administrator in the Department of Commerce or his authorized representative.

(c) *Director.* The Director, Bureau of Commercial Fisheries, Department of the Interior, or his authorized representative.

(d) *Person.* Individual, association partnership or corporation, or any one or all as the context requires.

(e) *Fishery.* A segment of the commercial fishing industry engaged in the catching of a single species or a group of species of fish and shellfish. Any other species taken must be caught incidentally while fishing for and using gear designed for the capture of the species comprising the fishery.

(f) *Expanded areas.* Fishing grounds not usually fished by the majority of the vessels operating in the fishery for which the proposed vessel is designed.

(g) *Newly developed gear.* The most modern gear available that is suitable for use in the fishery for which the proposed vessel is designed.

§ 256.3 Eligibility requirements.

(a) Vessel will be of advance design: In order to be considered to be of advance design, the vessel must be designed to have significant advantages in utility and efficiency over a significant number of vessels engaged in the fishery in which the proposed vessel is designed to operate.

(b) No economic hardship to efficient vessel operators: The determination that operation of a proposed vessel will not cause economic hardship to efficient vessel operators already operating in that fishery shall be made by the Secretary after notice and hearing, taking into consideration the condition of the resource, the efficiency of the vessels and gear being operated in that fishery compared with the proposed vessel, the prospects of the market for the species caught, and the degree and duration of any anticipated economic hardship.

(c) Aid in the development of the U.S. fisheries: For the vessel to aid in the development of the U.S. fisheries under conditions that the Secretary considers to be in the public interest, the vessel must be a modern vessel which will upgrade the fleet. Special consideration will be given to vessels which will provide a significant contribution in helping the domestic fishery meet foreign competition.

(d) The applicant possesses the ability, experience, resources and other qualifications necessary to enable him to operate and maintain the proposed new fishing vessel. In making this determination, the Secretary will inquire into the economic feasibility of the fishing venture and will require reasonable assurance that the applicant can operate the vessel profitably.

§ 256.4 Applications.

Applications for a subsidy shall be made on forms prescribed by the Secretary and shall be filed with the Director, Bureau of Commercial Fisheries, Washington, D.C. The applications must be accompanied by three copies of the cross section, deck arrangement, outboard profile, and specifications of the proposed vessel. The Secretary may require such additional complete detailed construction plans as may be necessary after a review of the application and accompanying plans and specifications.

(Approved by the Office of Management and Budget under control number 0648-0090)

[31 FR 16049, Dec. 15, 1966, as amended at 48 FR 57302, Dec. 29, 1983]

§ 256.5 Notice and hearing.

After receipt of an application eligible on its face for a construction differential subsidy the Director will publish a Notice of Hearing on a Subsidy Application in the FEDERAL REGISTER and hold hearings in accordance therewith. The purpose of the hearing will be to provide any person who feels he will be economically injured by the construction of the proposed vessel to cross-examine witnesses and/or present evidence that the operation of such vessel will cause economic hardship to efficient vessel operators already operating in the fishery for which the vessel is designed. Hearing procedures will be held in accordance with Part 257 of this subchapter.

§ 256.6 Subsidy contract.

(a) A contract for the payment of the subsidy will take effect when all contracts for the construction of such vessel, have been approved by the Administrator and the subsidy contract has been signed by the Secretary and the applicant; and

(b) The contract shall contain a finding of the useful life of the vessel as determined by the Secretary to be used in computing the amount of the total depreciated construction subsidy to be repaid to the Secretary in accordance with section 9 of the Act.

§ 256.7 Vessel operations.

(a) If the owner of a fishing vessel constructed with the aid of a subsidy desires to operate it in a different fishery than the one for which is was designed because of an actual decline in that particular fishery, he shall submit an application to the Secretary for permission to transfer the operations of the vessel to a different fishery. The application shall contain data showing the decline in the fishery for which the vessel was designed, how this decline is making the operation of the vessel uneconomical or less economical, and why the transfer will not cause economic hardship or injury to efficient vessel operators already operating in the fishery to which he wishes to transfer operations.

(b) Upon receipt of such an application the Secretary will publish a Notice of Hearing on an Application to Change Fishery in the FEDERAL REGISTER and hold hearings in accordance therewith. The purpose of the hearings will be to provide any person who feels he will be economically injured by said transfer of fishing operations an opportunity to cross-examine witnesses and/or present evidence that such a transfer of operations will cause economic hardship or injury to efficient vessel operators already operating in the fishery to which the vessel's operations would be transferred. Hearing procedures will be held in accordance with Part 257 of this subchapter.

§ 256.8 Penalties.

In case the Secretary shall find that a vessel has operated contrary to the provisions of the Act or of regulations issued thereunder, he shall immediately notify the owner in writing of the specific acts involved and the amount of the penalty. The vessel owner may appeal such a finding to the Secretary in writing within 30 days of the date of mailing such finding to the last known address of the vessel owner. The amount of penalty assessed in any 1 year shall be equal to the total subsidy paid multiplied by the ratio that 1 year bears to the total number of years determined, by the Secretary, as the useful life of the vessel: *Provided, however,* That if the amount is not paid within 60 days after receipt of notice then the amount due shall be the total amount of the subsidy paid depreciated to the beginning of the year in which the vessel operated unlawfully. Any amount due hereunder shall constitute a maritime lien against the vessel effective at the time the Secretary determines that the vessel has operated in violation of the Act or regulations.

§ 256.9 Inspection of vessels.

The Secretary or the Administrator shall have access at all times to all vessels which are being constructed under a contract providing for a construction subsidy provided for by the Act.

§ 256.10 Payment of subsidy.

(a) Subsidy payments will be paid in accordance with the terms of the subsidy contract. No subsidy payments shall be made until the entire amount of the applicant's share of the subsidized construction cost has been paid. If the amount of subsidy exceeds 30 percent of the subsidized construction cost, an amount equal to at least 30 percent of the subsidized construction cost shall be withheld until (1) the Maritime Administrator has certified that the vessel has been completed in accordance with the approved plans and specifications, and (2) all amounts due by the applicant on account of the construction of the vessel, including designing, equipping, and outfitting costs, have been paid.

(b) Any interim subsidy payments due pursuant to the subsidy contract shall be paid only after the Secretary has determined that such amount is properly due. If the amount of subsidy does not exceed 30 percent of the subsidized construction cost, none of the subsidy shall be paid until (1) the Maritime Administrator has certified that the vessel has been completed in accordance with the approved plans and specifications, and (2) all amounts due by the applicant on account of the construction of the vessel including designing, equipment, and outfitting costs, have been paid.

(c) Subsidy payments may be made to the applicant or jointly to the applicant and construction contractor or others, as may be appropriate, pursuant to the terms of the construction contract or otherwise.

(d) If the Maritime Administrator agrees, by his clearance of a payment schedule set forth in a pro forma construction contract to accompany a request for bids, that it is in the public interest to allow the percentage of the subsidized construction cost withheld to be less than 30 percent of the subsidized construction cost, then the subsidy contract executed in connection with such construction contract shall reflect payment in accordance with such payment schedule.

§ 256.11 Furnishing of information.

During the term of the contract, an affidavit will be submitted to the Secretary by the owner or his authorized agent, of each vessel constructed with the aid of a subsidy paid under the Act, within 90 days of the end of each calendar year, or at such other times as the Secretary may require, providing information on the citizenship and domicile of all vessel employees, the catch of the vessel by species, ports in which the catch was landed and assurance that the vessel has been continuously documented as a vessel of the United States during the preceding calendar year or period since the last previous affidavit was filed. It should also contain the basis for such information and when necessary include supporting documents. In addition, within 90 days of the close of each fiscal year, an operating statement shall be furnished to the Bureau.

(Approved by the Office of Management and Budget under control number 0648-0041)

[34 FR 19199, Dec. 4, 1969, as amended at 48 FR 57302, Dec. 29, 1983]

PART 257—NOTICE AND HEARING ON SUBSIDIES

Sec.

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257.2 Definitions.
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257.4 Mailing address.
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257.8 Parties.
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257.10 Notice, pleadings, and replies.
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257.12 Hearing procedure.
257.13 Evidence.
257.14 The record.
257.15 Decisions.

AUTHORITY: Sec. 10, 74 Stat. 214, as amended; 46 U.S.C. 1410 (1964).

SOURCE: 31 FR 16050, Dec. 15, 1966, unless otherwise noted.

§ 257.1 Basis and purpose.

(a) The Act of June 12, 1960 (Pub. L. 86-516), as amended by the U.S. Fishing Fleet Improvement Act (Pub. L. 88-498) authorizes the Secretary of the Interior to pay a subsidy for the construction of fishing vessels in shipyards of the United States and requires that this be done only after Notice and Hearing.

(b) The purpose of this part is to establish rules of practice and procedure for the notice and hearing.

§ 257.2 Definitions.

Definitions shall be the same as in Part 256 of this subchapter.

§ 257.3 Scope of rules.

The regulations in this part govern the procedure in hearings subject to Part 256 of this subchapter. These hearings are subject to the Administrative Procedure Act (5 U.S.C. 1003, et seq.) and Practice Before The Department of the Interior (43 CFR Part 1). The regulations shall be construed to secure the just, speedy, and inexpensive determination of every proceeding with full protection for the rights of all parties therein.

§ 257.4 Mailing address.

Documents required to be filed in, and correspondence relating to, proceedings governed by the regulations in this part shall be addressed to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240.

§ 257.5 Authentication.

All rules, orders, determinations, and decisions of the Secretary shall be signed by the Secretary.

§ 257.6 Inspection of records.

The files and records of these hearings, except those held by the Secretary for good cause to be confidential, shall be open to inspection and copying as follows:

(a) All pleadings, motions, depositions, correspondence, exhibits, transcripts of testimony, exceptions, briefs, and decisions in any formal proceeding under this part may be inspected and copied in the office of the Chief, Branch of Loans and Grants, Bureau of Commercial Fisheries, Department of the Interior, Washington, DC 20240.

(b) Orders, rules, rulings, opinions, determinations, and decisions may be inspected in the office of the Chief, Branch of Loans and Grants, except those held by the Secretary for good cause to be confidential and not cited as precedents.

§ 257.7 Appearance and practice.

(a) A party may appear in person or by an officer, partner or regular employee of the party; by or with counsel or as otherwise permitted by 43 CFR Part 1 in any proceeding under the regulations in this part. A party may offer testimony, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted by the Presiding Officer. Attorneys at law who are admitted to practice before the Federal Courts or before the courts of any State or possession of the United States, may represent a party as counsel.

(b) Persons who appear at any hearing shall deliver a written notice of appearance to the official reporter, stating for whom the appearance is being made. The Presiding Officer may require a person making an appearance in a representative capacity to show his authority to act in such capacity. The written appearance shall be made a part of the record.

§ 257.8 Parties.

(a) The term "party" shall include any natural person, corporation, association, firm, partnership, trustee, receiver, cooperative, or government agency determined by the Presiding Officer as having an interest in the proceedings. A party making an application shall be designated as "applicant." A party whose petition for leave to intervene is granted shall be designated an "intervenor." Only a party as designated in this section may introduce evidence or examine witnesses at hearings.

(b) For an intervenor to prove an interest in the hearings he must show that there is a reason for belief that the operation of the vessel described in the application will cause economic injury or hardship to efficient vessel operators already operating in the fishery in which it is proposed that the vessel be operated.

§ 257.9 Form, execution, and service of documents.

(a) All papers to be filed under the regulations in this part shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding and the title, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by (1) the person or persons filing same, (2) by an authorized officer thereof if it be a corporation or, (3) by an attorney or other person having authority with respect thereto.

(b) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(c) The original of every document filed under this part and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at ——— this ——— day of ———, 19—.

Signature ————.

§ 257.10 Notice, pleadings, and replies.

(a) After acceptance of an application eligible on its face for construction subsidy or for the transfer of a vessel to a different fishery, the Director, Bureau of Commercial Fisheries, shall publish a notice of hearing in the FEDERAL REGISTER advising that a hearing will be held not less than 30 days after date of such publication and setting the time and place and providing details with respect to such hearing. Any person desiring to intervene and present evidence that the approval of the application will cause economic injury or hardship to efficient vessel operators must file, at least 10 days prior to the date set for the hearing (unless otherwise consented to by the Presiding Officer), a Petition of Intervention setting forth his interest. The hearing will be held in Washington, D.C., unless such a petition is received. If such a petition is received, the Presiding Officer may designate a different hearing site by telegraphic notice to the parties in the proceedings. If no petition to intervene is received, it will not be necessary for the applicant to appear at the hearing if he files all information in writing as required by the Presiding Officer.

(b) All petitions shall be in writing and shall state the petitioner's grounds of interest in the subject matter; the facts relied upon, the relief sought; and shall cite the authority upon which the petition rests. The petition shall be served upon all parties named therein or affected thereby. Answers to petitions must be filed within 5 days of the hearing date, unless otherwise consented to by the Presiding Officer.

(c) Amendments or supplements to pleadings may be allowed or refused in the discretion of the Presiding Officer. The Presiding Officer may direct a party to state its case more fully and in more detail by way of amendment. If a response to an amended pleading is necessary, it may be filed and served within the time set by the Presiding Officer. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleadings.

(d) All motions and requests for rulings shall state the relief sought, the authority relied upon and the facts alleged. If made before or after the hearing, such motions shall be in writing. If made at the hearing, motions may be stated orally: *Provided, however,* That the Presiding Officer may require such motion to be reduced to writing and filed and served in the same manner as a formal motion. Oral argument upon a written motion, in which an answer has been filed, may be granted within the discretion of the Presiding Officer. Answers to a formal motion or pleading shall be filed and served in the same manner as the motion or pleading.

§ 257.11 Duties of Presiding Officer.

The Presiding Officer shall have the authority and duty to:

(a) Take or cause depositions to be taken.

(b) Rule upon proposed amendments or supplements to motions and pleadings.

(c) Regulate the course of the hearings.

(d) Prescribe the order in which evidence shall be presented.

(e) Dispose of procedural requests or similar matters.

(f) Hear and initially rule upon all motions and petitions before him.

(g) Administer oaths and affirmations.

(h) Examine witnesses.

(i) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(j) Exclude irrelevant, immaterial, incompetent, unreliable, repetitious or cumulative evidence.

(k) Exclude cross-examination which is primarily intended to elicit self-serving declarations in favor of the witness.

(l) Limit cross-examination to interrogatories which are required for a full and true disclosure of the facts in issue.

(m) Act upon petitions to intervene.

(n) Act upon submission of facts or arguments.

(o) Hear arguments at the close of testimony.

(p) Fix the time for filing briefs, motions and other documents to be filed in connection with hearings.

(q) Issue the initial decisions and dispose of any other pertinent matter that normally and properly arises in the course of proceedings.

§ 257.12 Hearing procedure.

(a) Unless authorized by the Presiding Officer, witnesses will not be permitted to read prepared testimony into the record. The evidentiary record shall be limited to factual and expert opinion testimony. Arguments will not be received in evidence but should be presented in opening and/or closing statements or in briefs to the Presiding Officer. All exhibits and responses to requests for evidence shall be numbered consecutively by the party submitting same and shall be filed with the Presiding Officer if filed during the hearing. If filed at some other time they should be filed in accordance with § 257.4 with one copy also being sent to each party to the hearing.

(b) Normally, the order of presentation at the hearing will be alphabetical in each of the following categories:

(1) Applicant.

(2) Intervenors.

Rebuttal should be presented without any adjournment in the proceedings.

(c) Cross-examination shall be limited, subject to § 257.13(b), to the scope of the direct examination and to witnesses whose testimony is adverse to the party desiring to cross-examine. Only cross-examination which is necessary to test the truth and completeness of the direct testimony and exhibits will be permitted.

(d) A request for oral argument at the close of testimony will be granted or denied by the Presiding Officer in his discretion.

(e) Rulings of the Presiding Officer may not be appealed prior to, or during, the course of the hearings, except in extraordinary circumstances where prompt decision by the Secretary is necessary to prevent unusual delay or expense, in which instance the matter shall be referred forthwith to the Secretary by the Presiding Officer. Any appeal shall be filed within 10 days from the date of the close of the hearing.

§ 257.13 Evidence.

(a) In any proceedings under this part, all evidence which is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, shall be admissible. Irrelevant and immaterial or unduly repetitious evidence shall be excluded.

(b) Each party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence; and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(c) At any time during the hearing the Presiding Officer may call for the production of further relevant and material evidence, reports, studies and analyses upon any issue, and require such evidence to be presented by the party or parties concerned, either at the hearing or adjournment thereof. Such material shall be received subject to appropriate motions, cross-examination and/or rebuttal. If a witness refuses to testify or produce the evidence as requested, the Presiding Officer shall forthwith report such refusal to the Secretary.

§ 257.14 The record.

(a) The Director, Bureau of Commercial Fisheries, will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director, Bureau of Commercial Fisheries. Transcripts of testimony will be available in any proceeding under the regulations of this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of the Interior, the rate will be fixed by the Director, Bureau of Commercial Fisheries.

(b) The transcript of testimony and exhibits, together with all papers and requests, including rulings and the initial decision filed in the proceeding, shall constitute the exclusive record for decision. The initial decision will be predicated on this same record, as will the final decision.

§ 257.15 Decisions.

(a) The Presiding Officer is delegated the authority to render initial decisions in all proceedings before him. The same officer who presides at the reception of evidence shall render the initial decision except when such officer becomes unavailable to the Department of the Interior. In such case, another Presiding Officer will be designated by the Secretary to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than ten (10) days after the hearing unless otherwise extended by the Presiding Officer upon motion by a party. The initial decision shall be made within twenty (20) days after the hearing or the receipt of all briefs, whichever is later. If no appeals from the initial decision are received within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(b) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon the material issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(c) Official notice may be taken of such matters as might be judicially noticed by the courts; or of technical or scientific facts within the general or specialized knowledge of the Department of the Interior as an expert body; or of a document required to be filed with or published by a duly constituted Government body: *Provided*, That where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence of the record, the fact of official notice shall be so stated in the decision and any party, on timely request, shall be afforded an opportunity to show the contrary.

PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

Subpart A—Seizures of U.S. Commercial Fishing Vessels

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AUTHORITY: 22 U.S.C. 1977.

Subpart A—Seizures of U.S. Commercial Fishing Vessels

SOURCE: 50 FR 1860, Jan. 14, 1985, unless otherwise noted.

§ 258.1 Purpose.

These rules clarify procedures for the administration of section 7 of the Fishermen's Protective Act of 1967. Section 7 establishes a Fishermen's Guaranty Fund to reimburse owners and charterers of United States commercial fishing vessels for certain losses and costs caused by the seizure and detention of their vessels by foreign countries under certain rights or claims not recognized by the United States.

§ 258.2 Definitions.

For the purpose of this part, the following terms mean

(a) *Act.* The Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1977 *et seq.*).

(b) *Capital equipment.* Equipment or other property which is depreciated for income tax purposes.

(c) *Citizen.* Any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

(d) *Depreciated replacement cost.* The present replacement cost of capital equipment after being depreciated on a straightline basis over the equipment's depreciable life, which is standardized at ten years.

(e) *Downtime.* The time a vessel normally would be in port or transiting to and from the fishing grounds.

(f) *Expendable items.* Any property which is maintained in inventory or expensed for tax purposes.

(g) *Fund.* The Fishermen's Guaranty Fund established in the U.S. Treasury under section 7(c) of the Act (22 U.S.C. 1977(c)).

(h) *IATTC.* Inter-American Tropical Tuna Commission.

(i) *Other direct charge.* Any levy which is imposed in addition to, or in lieu of, any fine, license fee, registration fee, or other charge.

(j) *Owner.* The owner or charterer of a commercial fishing vessel.

(k) *Secretary.* The Secretary of Commerce or his designee.

(l) *Seizure.* Arrest and detention of a fishing vessel by a foreign country for allegedly illegal fishing.

(m) *U.S. fishing vessel.* Any private vessel documented or certificated under the laws of the United States as a commercial fishing vessel.

§ 258.3 Eligibility.

Any owner or charterer of a U.S. fishing vessel is eligible to apply for an agreement with the Secretary providing for a guarantee in accordance with section 7(a) of the Act.

§ 258.4 Applications.

(a) *Applicant.* An eligible applicant for a guaranty agreement must

(1) Own or charter a U.S. fishing vessel, and;

(2) Submit with his application the fee specified in § 258.6 of this part.

(b) *Application forms.* Application forms may be obtained by writing to the Financial Services Division, National Marine Fisheries Services, Washington, D.C. 20235 or by calling (202) 634-4688.

(c) *Where to apply.* Applications must be submitted to the Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235.

(d) *Application approval.* Application approval will be by the Secretary's execution of the guaranty agreement.

(Approved by the Office of Management and Budget under control number 0648-0095)

§ 258.5 Guaranty agreement.

(a) *Period in effect.* Agreements are effective for a fiscal year beginning October 1 and ending on the next September 30. Applications submitted after October 1 are effective from the date the application was mailed (determined by the postmark) through September 30.

(b) *Guaranty agreement transfer.* A guaranty agreement may, with the Secretary's consent, be transferred when a vessel which is the subject of a guaranty agreement is transferred to a new owner if the transfer occurs during the agreement period.

(c) *Guaranty agreement renewal.* A guaranty agreement may be renewed for the next agreement year without resubmitting an application form if the appropriate fee for the next year is submitted before expiration of the existing agreement. Renewals are subject to the Secretary's approval.

(d) *Provisions of the agreement.* The agreement will provide for reimbursement for certain losses caused by foreign countries' seizure and detention of U.S. fishing vessels on the basis of claims to jurisdiction which are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States; or, in the case where a general claim of exclusive fishery management authority is recognized by the United States and a U.S. fishing vessel is seized on the basis of conditions and restrictions which:

(1) Are unrelated to fishery conservation and management;

(2) Fail to consider traditional practices of U.S. fishing vessels;

(3) Are more onerous than those applied to foreign fishing vessels by the United States in its Fishery Conservation Zone;

(4) Fail to allow U.S fishing vessels equitable access to fishery resources under the foreign countries' exclusive management authority.

§ 258.6 Fees.

(a) *General.* Fees provide for administrative costs and at least one third of projected claims. Fees are set annually on the basis of past and anticipated claim experience. The annual agreement year for which fees are payable starts on October 1 and ends on the following September 30.

(b) *Amount and payment.* The amount of each annual fee or adjusted fee will be established by the Chief, Financial Services Divisions, by publication of a notice in the FEDERAL REGISTER. Each notice will establish the amount of the fee, when the fee is due, when the fee is payable, and any special conditions surrounding extension of prior agreements or execution of new agreements. Unless otherwise specified, agreement coverage will commence with the date of fee payment.

(c) *Adjustment and refund.* Fees may be adjusted at any time to reflect actual seizure and detention experience for which claims are anticipated. Failure to submit adjusted fees will result in agreement termination as of the date the adjusted fee is payable. No fees will be refunded after an agreement is executed by the Secretary.

(d) *Disposition.* All fees will be deposited in the Fishermen's Guaranty Fund. They will remain available without fiscal year limitation to carry out section 7 of the Act. Claims will be paid first from fees and then from appropriated funds. Fees not required to pay administrative costs or claims may be invested in U.S. obligations. All earnings will be credited to the Fishermen's Guaranty Fund.

§ 258.7 Conditions for claims.

(a) Payment will be made when—

(1) A covered vessel is seized by a foreign country under conditions specified in the Act and the guaranty agreement; and

(2) The incident occurred during the period the guaranty agreement was in force for the vessel involved; unless there is clear and convincing credible evidence that the seizure did not meet the requirements of the Act.

(b) Payments will be made to the owner for—

(1) All actual costs (except those covered by section 3 of the Act or reimbursable from some other source) incurred by the owner during the seizure or detention period as a direct result thereof, including:

(i) Damage to, or destruction of, the vessel or its equipment;

(ii) Loss or confiscation of the vessel or its equipment; or

(iii) Dockage fees or utilities.

(2) The market value of fish or shellfish caught before seizure of the vessel and confiscated or spoiled during the period of detention, and;

(3) Up to 50 percent of the vessel's gross income lost because of the seizure and detention.

(c) *Exceptions.* No payment will be made from the Guaranty Fund for a seizure which is:

(1) Covered by any other provision of law (for example, fines, license fees, registration fees, or other direct charges payable under section 3 of the Act, administered by the Secretary of State);

(2) Made by a country at war with the United States;

(3) In accordance with any applicable convention or treaty, if that treaty or convention was made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure;

(4) Which occurs before the guaranty agreement's effective date or after its termination;

(5) For which other possible sources of alternative reimbursement have not first been fully pursued (for example, the insurance coverage required by the agreement and valid claims under any law), or;

(6) For which material requirements of the guaranty agreement, the Act, or the program regulations have not been fully fulfilled.

§ 258.8 Claim procedure.

(a) *Where and when to apply.* Claims must be submitted to the National Marine Fisheries Service, Financial Services Division, Washington, DC 20235. They must be submitted within 90 days after the vessel's release. Requests for extension of the filing deadline must be in writing and approved by the Chief, Financial Services Division.

(b) *Contents of claim.* All material allegations of a claim must be supported by documentary evidence. Foreign-language documents must be accompanied by an authenticated English translation. Claims must include the following:

(1) The captain's sworn statement about the exact location and activity of the vessel when seized;

(2) Certified copies of charges, hearings, and findings by the government seizing the vessel;

(3) A detailed computation of all actual costs directly resulting from the seizure and detention, supported by receipts, affidavits, or other documentation acceptable to the Chief, Financial Services Division;

(4) A detailed computation of lost income claimed, including:

(i) The date and time seized and released,

(ii) The number of miles and steaming time from the point of seizure to the point of detention,

(iii) The total fishing time lost (explain in detail if lost fishing time claimed is any greater than the elapsed time from seizure to the time required after release to return to the point of seizure),

(iv) The tonnage of catch on board at the time of seizure,

(v) The vessel's average catch-per-day's fishing for the three calendar years preceding the seizure,

(vi) The vessel's average downtime between fishing trips for the three calendar years preceding the seizure,

(vii) The price-per-pound for the catch on the first day the vessel returns to port after the seizure and detention, and;

(5) Documentation for confiscated, damaged, destroyed, or stolen equipment, including

(i) The date and cost of acquisition, supported by invoices or other acceptable proof of ownership, and

(ii) An estimate from a commercial source of the replacement or repair cost.

(c) *Burden of proof.* The claimant has the burden of proving all aspects of the claim.

(Approved by the Office of Management and Budget under control number 0648-0095)

§ 258.9 Amount of award.

(a) *Lost fishing time.* Compensation is limited to 50 percent of the gross income lost as a direct result of the seizure and detention, based on the value of the average catch-per-day's fishing during the three most recent calendar years immediately preceding the seizure. Only the following two methods of computing lost fishing time compensation are acceptable. Claimants may use either method. Claimants for tuna vessel seizures must use IATTC's catch statistics.

(1) First method (this method must use annual catch divided by 365 days to calculate catch-per-day):

(i) Multiply days lost as a direct result of seizure and detention by average catch-per-day during last three calendar years,

(ii) Multiply amount in paragraph (a)(1)(i) of this section by market price, and

(iii) Divide by two to get the compensable amount, or;

(2) Second method (*always* use IATTC statistics for *all* calculations):

(i) Subtract tonnage aboard at time of seizure from highest trip tonnage during last three calendar years,

(ii) Divide amount in paragraph (a)(2)(i) of this section by average catch-per-day during last three calendar years to get remaining fishing days required to fill vessel,

(iii) Subtract amount in paragraph (a)(2)(ii) of this section from number of days detained,

(iv) *If amount in paragraph (a)(2)(iii) of this section is negative or zero,* multiply number of days detained by average catch-per-day during last three calendar years (if not, go on to (v)),

(v) *If amount in paragraph (a)(2)(iii) of this section is positive and is equal to or less than average downtime,* multiply amount in paragraph (a)(2)(ii) of this section by average catch-per-day during last three calendar years (if not, go on to paragraph (vi)),

(vi) *If amount in paragraph (a)(2)(iii) of this section is positive and is greater than average downtime,* subtract average downtime and multiply the sum of this amount and the amount in paragraph (a)(2)(ii) of this section by the average catch-per-day during last three calendar years (subtract additional downtime each time the sum computed in this manner exceeds average trip time during last three calendar years),

(vii) Multiply amount in paragraph (a)(2) (iv), (v), or (vi) of this section, whichever is applicable, by market price, and

(viii) Divide by two to get the compensable amount.

(b) *Value of catch loss by weight class.* Each seizure claim submitted must contain a copy of the catch landing receipt for the trip preceding the seizure. This document provides a detailed size and species mix of the catch and the price paid per weight class for each (e.g., yellowfin over 7½ lbs. @ $1,200/ton and yellowfin under 7½ lbs. @ $1,100/ton, etc.). The Secretary will determine from the catch landing receipt an average by weight class of the amount of catch on the trip prior to the seizure, apply this percentage to the average catch per day's fishing (IATTC's figure), and arrive at a figure relating to the approximate catch for each applicable species. The following method will be used:

(1) The relative percentages for each weight class will be determined by dividing each weight class by the sum of them all, and;

(2) IATTC's catch rate will be multiplied by each weight class percentage to arrive at an average for each weight class. The average for each weight class will be multiplied by the relative price per pound (for each class) to determine the value per weight class.

(c) *Stolen or confiscated property.* Confiscation of property which the claimant was required to buy back from the confiscator is reimbursable by the State Department under section 3 of the Act. Any other property confiscated is reimbursable from this Guaranty Fund. Confiscated property

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is divided into the following categories:

(1) Compensation for confiscation of vessels, where no buy back has occurred, will be based on market value as determined by the Secretary;

(2) Compensation for *capital equipment* other than vessel, will be based on depreciated replacement cost.

(3) Compensation for *expendable items* will be 50 percent of their replacement cost; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound on the first day the vessel returns to port after the detention.

(d) *Fuel expense.* Compensation for fuel expenses will be based on the purchase price, the time required to run to and from the fishing grounds, the detention time in port, and the documented fuel consumption of the vessel.

(e) *Insurance proceeds.* No payments will be made from the Fund for losses covered by any policy of insurance or other provisions of law.

(f) *Appeals.* All determinations under this section are final.

§ 258.10 Payments.

The Chief, Financial Services Division, will pay the claimant the amount calculated under § 258.9. If there is a dispute about who should be paid what, the Chief will settle it after requesting proof of interest from all parties.

§ 258.11 Records.

The Chief, Financial Services Division, will have the right to inspect claimants' books and records as a precondition to approving claims. All claims must contain written authorization of the guaranteed party for any international, Federal, state, or local governmental agencies to provide the Chief, Financial Services Division, any data or information pertinent to a claim.

§ 258.12 Penalties.

Persons who willfully make any false or misleading statement or representation to obtain compensation from the Fund are subject to criminal prosecution under 22 U.S.C. 1980(g). This provides penalties up to $25,000 or imprisonment for up to one year, or both. Any evidence of criminal conduct will be promptly forwarded to the United States Department of Justice for action. Additionally, misrepresentation, concealment, and fraud, or acts intentionally designed to result in seizure, may void the guaranty agreement.

Subpart B—Compensation for Damage Caused by Foreign Vessels in the Fishermen's Protective Zone

AUTHORITY: Sec. 10, 91 Stat. 1413 (22 U.S.C. 1980).

SOURCE: 43 FR 45870, Oct. 4, 1978, unless otherwise noted.

§ 258.20 Purpose.

This subpart provides rules and procedures for the granting, repayment, and cancellation of loans to owners and operators of U.S. commercial fishing vessels for the loss, damage, or destruction of their fishing vessles or gear caused by a vessel (or its crew or fishing gear) of a foreign nation operating in the Fishermen's Protective Zone.

§ 258.21 Definitions.

Unless the context otherwise requires, in this subpart:

(a) "Alternative claim" means any claim not made under this subpart which seeks compensation for the same loss, damage, or destruction of a fishing vessel or fishing gear as a claim under this subpart.

(b) "At fault" means negligence or willfulness, through action or inaction, causing the loss, damage, or destruction involved.

(c) "Fishermen's Protective Zone" means: (1) The area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured, (2) all areas in which U.S. Continental Shelf fishery resources are found, and

(3) the area representing the migratory range of any species of anadromous fish of the United States; except that such area shall not extent within any foreign nation's territorial sea or fishery conservation zone (or the equivalent) to the extent that such sea or zone is recognized by the United States.

(d) "Foreign vessel" means a vessel of a foreign nation, its crew, or fishing gear.

(e) "Secretary" means the Secretary of Commerce or his or her designated representative.

(f) "Loan" means a loan under section 10 of the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1980).

§ 258.22 Eligibility.

(a) *Applicants.* An applicant must be the owner or operator of a vessel which is used primarily for the commercial catching, processing, or transporting of fish or shellfish and which is either documented under the laws of the United States in the fisheries trade or certified or registered under the laws of any political subdivision of the United States.

(b) *Loss, damage, or destruction.* The applicant's vessel or its fishing gear must have been lost, damaged, or destroyed after July 1, 1976, as a result of the operation of a foreign vessel (or its crew or gear) in the Fishermen's Protective Zone. The total amount of such loss, damage, or destruction must exceed $2,000, as determined by the Secretary under § 258.26.

(c) *Alternative claims.* Any applicant who has made an alternate claim shall not be eligible for a loan if the Secretary determines that the alternative claim is substantially resolved at the time of the application or at the time of the loan. An alternative claim shall be regarded as substantially resolved if, at the time of the application or loan, the alternative claim proceeding has resulted in compensation for the claimant (whether or not such compensation is less than the amount applied for under a loan application) or in a final denial of the claims.

(d) *Insurance.* An applicant's claim for such loss, damage, or destruction cannot be of such a nature as would ordinarily be covered under the collision clause, or other clauses, of a full hull and machinery policy of commercial insurance or under a full protection and indemnity of policy of commercial insurance.

§ 258.23 Applications.

(a) *Form.* Applications for loan shall be submitted to the Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235, by the owner or operator of the vessel concerned. Each application must be in a form suitable to establish that the situation involved meets the eligibility criteria in § 258.22 and must include as attachments the affidavits and estimates referred to in this section.

(b) *Affidavit of vessel master.* Applications shall include an affidavit by the master of the applicant's vessel (or by different masters if more than one was involved during any material period) fully describing the circumstances before, during, and after the incident resulting in loss, damage, or destruction which states, among other things:

(1) Time, date, and locational coordinates (longitude and latitude) of the incident;

(2) Actions of the foreign vessel alleged to have caused the loss, damage, or destruction, before, during, and after the incident (if such actions were observed);

(3) Actions of the applicant's vessel or crew before, during, and after the incident, including a full description of circumstances involving deployment and retrieval of fishing gear (for example: time, date, locational coordinates, and circumstances of the gear's retrieval, and all attempts at retrieval);

(4) Description of the size, type, flag, identifying number, color of house or hull, or other identifying characteristics, including a photograph, if available, of the foreign vessel alleged to have caused the loss, damage, or destruction (if such vessel was observed);

(5) A full statement of the reasons for belief that the loss, damage, or destruction was caused by a foreign vessel rather than by: wind, weather, sea, or other natural conditions; defec-

tive gear; defective deployment (for example, means of fixing gear); defective retrieval (for example, means to have been used for relocating gear); or a domestic vessel;

(6) Names and statements of any material witnesses;

(7) Nature and extent of loss, damage, or destruction, including, if possible, photographs of the damage, even if taken after return to port; and

(8) Description of the property which was lost, damaged, or destroyed, including type, size, material of construction, number of units, and remaining economically useful life at the time of the incident.

(c) *Affidavit of owner or operator.* Applications shall include an affidavit from the owner or operator of the vessel or gear for which a claim is being made stating the date, cost, and place of acquisition of the property which was lost, damaged, or destroyed, as well as its age and remaining economically useful life when acquired, and shall attach, if available, a copy of the original invoice or bill of sale of the property concerned.

(d) *Estimates.* Applications shall include three estimates from commercial sources, acceptable to the Secretary, setting forth the replacement cost of the property concerned as well as its repair cost, if repairable.

(e) *Evidence of foreign vessels in the area.* Applications shall include documentation from the U.S. Coast Guard or National Marine Fisheries Service indicating all foreign vessels known to have been in the vicinity of the incident at any time after deployment of the gear lost, damaged, or destroyed and before its retrieval or attempted retrieval.

(f) *Other evidence.* The Secretary may, in his or her discretion, require further affidavits, other evidence, or supplementary information.

(g) *Application fee.* Applications shall be accompanied by a fee in the form of a check or money order made payable to "National Marine Fisheries Service" in the amount of $50. This fee shall not be refunded.

(h) *Time requirement.* After October 1, 1978, applications must be postmarked not later than 60 calendar days after the date the claimed loss, damage, or destruction occurred.

(i) *Abandoned applications.* As soon as practicable after receipt of an incomplete or improperly executed application, the applicant shall be notified by the National Marine Fisheries Service of any deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 calendar days following the date of notification, the application shall be considered abandoned.

(Approved by the Office of Management and Budget under control number 0648-0094)

[43 FR 45870, Oct. 4, 1978, as amended at 48 FR 57302, Dec. 29, 1983]

§ 258.24 Approval of loan applications.

A loan may be made to the applicant, if the Secretary finds that:

(a) The eligibility requirements of § 258.22 are met;

(b) The application satisfies the requirements of § 258.23; and

(c) The Secretary reasonably determines that the claimed loss, damage, or destruction was caused, or could reasonably have been caused, by the operation of a foreign vessel in the Fishermen's Protective Zone.

§ 258.25 Terms and conditions of loans.

(a) *Loan amount.* The amount of a loan will equal the extent of the loss, damage, or destruction involved as determined under § 258.26.

(b) *Time period.* The terms of a loan shall not exceed the economically useful life of the vessel or gear acquired or repaired with the proceeds of the loan, and may, at the discretion of the Secretary, be for a shorter period of time.

(c) *Collateral.* Collateral for the loan shall be required at the discretion of the Secretary and may include a secured interest in the vessel or gear acquired or repaired with the proceeds of the loan. All loans will be evidenced by a promissory note payable to the Secretary from the owner of such vessel or gear.

(d) *Interest rate.* The interest rate for loans will be 3½ percentum per annum.

(e) *Loan fees.* A fee for granting the loan shall be charged and deducted from the proceeds of the loan. The amount of this fee shall be equal to the difference during the loan's first year between the loan's 3½ percent interest rate and the approximate cost of Government borrowings of about a 7-year maturity.

(f) *Payment.* The Secretary may require that the proceeds of a loan be escrowed and subsequently paid directly to the supplier of goods or services in connection with the replacement or repair of vessels or gear after the Secretary's receipt of all properly executed loan documents and upon presentation of proper invoices and authorizations to pay. Payment may be made to loan recipients if circumstances warrant.

(g) *Assignment.* Loan recipients shall assign, or agree to assign, to the Secretary any rights they might have to recover moneys or damages from any person for the loss, damage, or destruction for which a loan is made.

(h) *Repayment or cancellation.* Loans shall be repaid or canceled in accordance with § 258.28.

(i) *Collection efforts.* Loan recipients shall agree to assist the Secretary's efforts under § 258.29.

(j) *Other terms and conditions.* Loans shall be subject to such other terms and conditions as the Secretary deems necessary and appropriate.

§ 258.26 Determination of amount of loss, damage, or destruction.

(a) *Value of property.* In the case of property which has been lost or destroyed, the Secretary shall determine the value of the loss or destruction by using the replacement cost of such property as if it had been the original acquisition cost of such property and by depreciating such replacement cost on a straight line basis over the economically useful life of such property. In the case of property which is capable of being repaired, the Secretary shall determine the value of damage in light of the estimates of repair submitted under § 258.23(d), but in no event shall damage determinations exceed the depreciated, present, replacement cost of the property concerned. Example: 100 lobster pots with a present replacement cost of $100 each were totally lost. Each pot had an economically useful life of 36 months and was 18 months old, leaving a remaining economically useful life of 18 months. The value of loss would be calculated as follows:

100 pots × $100 = $10,000 present replacement cost.

$10,000 ÷ 36 months = $277.78 depreciation per month.

$277.78 × 18 months remaining useful life = $5,000 for depreciated, present, replacement cost.

If the casualty were confined to property which could be repaired, the value of the casualty would be the actual cost of repair up to, but not exceeding, the depreciated, present, replacement cost of $5,000 as calculated above. If partial loss, damage, or destruction occurs, and the applicant is unable to determine which receipts of purchase pertain to the lost, damaged, or destroyed gear, the applicant must submit proof of purchase for all gear involved in the incident in order that an averaging method may be used to determine the depreciation. If the gear involved was purchased on several dates, the number of months between the first and last purchases will be divided in half and depreciation will start from the midpoint. The following is an example: Purchase dates are January, March, and June. Date of loss is December. Computation will be made as follows:

January to June = 6 months.

6 months ÷ 2 = 3 months.

Three months from the first date of purchase (January) is April.

Depreciation will be computed from April to the date of the incident in December. The allowable depreciation in this example is 9 months.

§ 258.27 Determination of fault.

(a) *Investigation.* Following the granting of each loan, the Secretary shall investigate the circumstances of the incident resulting in the loss, damage, or destruction concerned in an attempt to ascertain the facts required for a determination of whether or not the loan recipient was at fault for the loss, damage, or destruction.

(b) *Factors to be considered.* In making a determination of fault, the Secretary shall take into account:

(1) Evidence submitted with the application in accordance with § 258.23; (2) whether the loan recipitent, prior to the incident involved, reported the location of the fishing gear to the U.S. Coast Guard for broadcasting to foreign vessels in accordance with 50 CFR 611.11 (failure to do so will create a presumption that the loan recipient was at fault); and (3) such other matters as the Secretary may deem appropriate.

(c) *Notification of preliminary determination.* Upon completing the investigation, the Secretary shall make a preliminary determination of whether it is possible to ascertain who was at fault for the incident and, if so, whether the loan recipient was at fault and notify the loan recipient of these determinations.

(d) *Review of record.* The loan recipient may examine the complete record upon which the determinations of the Secretary are made under this section.

(e) *Comments.* The loan recipient shall have 30 calendar days after the receipt of notification under paragraph (c) of this section to submit any comments, data, or other information concerning the preliminary determination of the Secretary. All timely comments, data, or other information shall be considered by the Secretary prior to making a final determination.

(f) *Final determination.* As soon as practicable after the termination of the period described in paragraph (e) of this section, the Secretary shall make a final determination of fault and shall notify the loan recipient of the determination.

§ 258.28 Loan repayment or cancellation.

Based upon the final determinations made under § 258.27 the Secretary shall:

(a) If it is determined that the loan recipient was not at fault, cancel repayment of the loan and refund any principal and interest payments made thereon;

(b) If it is determined that the loan recipient was at fault, require that the loan be repaid prior to its original term within a reasonable time as determined by the Secretary, taking into account its original duration and the percentage of fault attributable to the loan recipient; or

(c) If it cannot be determined whether or not the loan recipient was at fault, continue the loan according to its original terms.

§ 258.29 Government collection. [Reserved]

Subpart C—Compensation for Fishing Vessel or Fishing Gear Damage Attributable to Other Vessels in a U.S. Fishery

AUTHORITY: Pub. L. 95-376, Pub. L. 96-289, and Pub. L. 96-561; 92 Stat. 715, (22 U.S.C. 1980).

SOURCE: 46 FR 58805, Dec. 3, 1981, unless otherwise noted.

§ 258.30 Purpose and scope.

(a) This subpart contains the regulations for compensating the owners or operators of United States commercial fishing vessels or fishing gear for casualties occurring on or after December 22, 1980. Eligible vessel casualties are those which are attributable to any foreign vessel (or its crew or fishing gear). Eligible fishing gear casualties are those which are attributable to any other vessel (of its crew or fishing gear), whether or not such vessel is a vessel of the United States.

(b) For regulations governing casualties occurring before January 1, 1979, see Subpart B.

§ 258.31 Definitions.

Unless the context otherwise requires, in this subpart:

(a) *"Assistant Administrator"* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(b) *"Casualty(ies)"* means loss, damage, or destruction of fishing vessels which is attributable to foreign vessels (or their crew or fishing gear) or loss, damage, or destruction of fishing gear which is attributable to any other vessels (or their crew or fishing gear).

(c) *"Chief, FSD"*, means Chief, Financial Services Division, National Marine Fisheries Service.

(d) *"Commercial shipping lane"* means any area designated for commercial shipping traffic by vessel tracklines shown on pilot charts published by the U.S. Defense Mapping Agency Hydrographic Center or vessel traffic separation lanes as depicted on U.S. National Ocean Survey nautical charts.

(e) *"Compensable period"* means that period after the discovery of the casualty between the date of order and receipt of replacement gear, or the date repair begins and ends (whichever is appropriate), or such other period as the Chief, FSD, determines to be reasonable.

(f) *"Fishery"* means: one or more stocks of fish which can be treated as a unit for purposes of conservation, management, and utilization and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(g) *"Fishery Conservation Zone"* means the fishery conservation zone established by section 101 of the Magnuson Fishery Conservation and Management Act of 1976, as amended.

(h) *"Fishing"* means:

(1) The commercial catching, taking, or harvesting of fish; and

(2) Any operations at sea in support of, or in preparation for, any activity described in paragraph (h)(1) of this section. Fishing does not include any scientific research activity conducted by a scientific research vessel.

(i) *"Fishing gear"* means any equipment or appurtenance which is:

(1) Used for, or of a type which is normally used for, fishing by a fishing vessel, whether or not attached to the vessel; and

(2) Not considered a part of the fishing vessel for the purpose of recovery under a commercial policy of full hull and machinery and protection and indemnity insurance.

(j) *"Fishing vessel"* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(k) *"Foreign vessel"* means a vessel other than a vessel of the United States, regardless of such vessel's trade or use.

(l) *"Rebuttable presumption"* means a presumption which may be overcome by additional evidence which may be available.

(m) *"Resulting economic loss"* means the gross income that an eligible fishing vessel owner or operator will lose, as a direct result of the casualty with respect to which a claim is filed, (1) on the vessel trip during which the casualty was discovered; (2) if appropriate under § 258.36(a)(2), on the next vessel trip after that during which the casualty was discovered; and (3) on later vessel trips which would normally have been made at full operational capacity during the compensable period (as defined under paragraph (e) of this section) because of not being able to fish or having to fish at a reduced level of effort.

(n) *"Trip ticket"* means a receipt documenting the amount and value of fish sold from the catch of a fishing vessel.

(o) *"United States fishery"* means any fishery subject to the exclusive fishery management authority of the United States under the Magnuson Fishery Conservation and Management Act of 1976, as amended.

(p) *"United States fishing vessel"* means any fishing vessel which is a vessel of the United States.

(q) *"Unobserved fishing gear casualty"* means a fishing gear casualty which was not observed by the applicant or any other witness known to the applicant.

(r) *"Vessel of the United States"* means any vessel documented under the laws of the United States or registered under the laws of any State, regardless of such vessel's trade or use.

§ 258.32 Eligibility.

(a) *Applicants.* Only the owner or operator of a United States fishing vessel or fishing gear is eligible for compensation under this subpart.

(b) *Dates.* Casualties occurring on or after December 22, 1980, are eligible for compensation under this subpart. Casualties occurring on or after January 1, 1979, and before December 22, 1980, are governed by program regulations published October 25, 1979, and subsequent amendments published before December 22, 1980. See Subpart B of this part for regulations governing casualties occurring before January 1, 1979.

(c) *Casualty to fishing vessels.* A casualty to a United States fishing vessel is eligible for compensation under this subpart if it occurred in a United States fishery and is attributable to any foreign vessel (or its crew or fishing gear).

(d) *Casualty to fishing gear.* A casualty to fishing gear is eligible for compensation under this subpart if it occurred in a United States fishery and is attributable to any other vessel (or its crew or fishing gear, even if such gear was not attached to the vessel), whether or not such vessel is a foreign vessel.

(e) *Reporting requirement.* A casualty to fixed fishing gear attributable to any other vessel is not eligible for compensation unless the claimant has met all mandatory reporting requirements regarding gear deployment set forth in any applicable Fishery Management Plan or other Federal regulation. Fishermen are encouraged to participate in voluntary gear reporting programs. A record of gear deployment broadcast to other vessels may be considered evidence of prudent care on the part of a fisherman to notify other vessels in a particular area of the presence of that fisherman's gear.

(f) *Insurance.* Compensation for property loss under this subpart will not be made for any part of a casualty which would have been recoverable under a commercial policy of full hull and machinery and protection and idemnity insurance, regardless of whether or not such insurance was in effect. The Fund will, however, compensate for United States fishing vessel casualties caused by foreign vessels (or their crew or fishing gear) to the extent of a reasonable deductible under full hull and machinery and protection and indemnity insurances even if such insurances were not in effect. It will also compensate for economic loss resulting from fishing vessel casualties.

(g) *Commercial shipping lanes.* No casualty incurred in a commercial shipping lane caused by a vessel transiting such lane is eligible for compensation under this subpart.

§ 258.33 Applications.

(a) *Who may apply.* Applications under this subpart shall be submitted by the owner or operator whose United States fishing vessel or fishing gear suffered the casualty and the resulting economic loss for which compensation is sought.

(b) *Where to apply.* Applications shall be submitted to the Financial Services Division, National Marine Fisheries Service, Washington, DC 20235.

(c) *Time requirement.* After June 30, 1980, applications must be submitted to the Financial Services Division within 90 calendar days of the date the owner or operator became aware of the casualty. Applications sent by mail must be postmarked during that 90-day period. Applications made later than 90 days are not eligible. The 90-day filing requirement is satisfied by the filing of an improperly completed or incomplete application.

(d) *Contents.* (1) Applications may be submitted on forms provided by the Financial Services Division when such forms are available. Until such forms are available, applications shall include the information required by paragraphs (d) through (l) of this section.

(2) Each application shall be signed by the applicant and shall state the applicant is the owner or operator of the United States fishing vessel or fishing gear involved in the casualty.

(3) Each application shall include as attachments the affidavits and supporting documentation required by this section. For the purposes of this section, an affidavit is a written statement sworn to or affirmed before a notary public or other official empowered to administer oaths.

(e) *Affidavit of vessel master.* Each application shall include an affidavit of the master of the United States fishing vessel which suffered, or whose fishing gear suffered, the casualty and the resulting economic loss for which compensation is sought. If more than one master was involved at any material time before, during, or after the casualty, the application shall include an affidavit from each master. The affidavit shall set forth a full statement of all facts and circumstances before, during, and after the incident resulting in the casualty and the resulting economic loss for which compensation is sought, including:

(1) A full description of the nature of the fishing operations engaged in prior to the casualty. The description of casualties to fixed fishing gear shall ordinarily include a diagram and accompanying explanation showing the various components of the gear involved in the casualty and how they were arranged while operating.

Example. The description for a casualty to fixed fishing gear should explain:

(i) How the gear was fixed, anchored, or otherwise prevented from drifting and with what size, weight, type, construction material, and number of anchors or other means of fixation;

(ii) How many pots, traps, or other units of gear of what size, weight, type, and construction material were fixed to the gear; how they were fixed; and at what intervals;

(iii) How the gear was buoyed with what size, shape, type, and construction material buoys, and how many buoys were used at what intervals on the gear set;

(iv) What size, weight, type, grade, and construction material lines, ropes, or cables were used;

(v) What provisions were made to ensure the gear could be seen by other vessels;

(vi) What provisions were made to ensure the gear could be located and retrieved;

(vii) At what depth the gear operated, its length, and what area it covered;

(viii) What weather or sea conditions the gear was designed to withstand; and

(ix) Any other relevant details of the casualty.

(2) A full description of the nature and extent of loss, damage, or destruction involved in the casualty, including photographs of the damage where possible.

(3) The time, date, and location (in latitude and longitude coordinates or Loran C readings) of the incident resulting in the casualty.

(4) If the casualty was not observed at the time it happened, include:

(i) The time, date, and location when the gear was first deployed;

(ii) The time, date, and location when the gear was last observed to be in a sound state (if different from the time and date of its deployment);

(iii) The time, date, and location when the casualty first became known; and

(iv) A full statement (to the best of applicant's knowledge) of the weather and sea conditions which existed during the period after deployment and before first knowledge of the casualty.

(5) If the casualty was observed, a full description of the vessel which caused the casualty (for instance, the vessel's size, type, flag, name, number, color of house or hull, and other identifying characteristics) and a full description of such vessel's and/or its crew's action before, during, and after the casualty.

(6) A full description of the actions of the applicant's fishing vessel and its crew before, during, and after the casualty, including all circumstances involving deployment of any fishing gear involved in the casualty and locating and retrieving it, or all attempts at locating and retrieving it.

(7) A full statement of the reasons for believing the casualty was caused by another vessel (or its crew or gear) rather than by weather and sea conditions or by other ineligible causes (for example, defective deployment, defective retrieval, or other circumstances which constitute normal operating contingencies);

(8) A full inventory of all property involved in the casualty, including: the number of all components lost, damaged, or destroyed; their size, type, grade and construction material; their age; their useful economic life; whether the damage was total or repairable (and, if a combination of both, what components were totally damaged or lost and what components were retrieved in what condition, etc.).

(f) *Affidavit of the owner.* Each application shall also include an affidavit of the owner of the United States fishing vessel or fishing gear involved in the casualty. A single affidavit of the vessel master and owner may be submitted if the vessel master is also the owner of the property concerned. Each affidavit shall include:

(1) A complete inventory of all fishing gear owned by the applicant of a type similar to any fishing gear involved in the casualty for which a claim for compensation is being made. The inventory shall be current as of the date of the casualty and must include the lost, damaged, or destroyed fishing gear. The age and remaining useful economic life of each unit of fishing gear in the inventory shall be specified.

(2) The date, place, and cost of acquisition of all fishing gear and components lost, damaged, or destroyed in the casualty. Purchase invoices or other acceptable proof of ownership for such gear shall be submitted.

(g) *Estimates.* Each application shall include two estimates (or one estimate and one purchase invoice or receipt) from commercial sources, acceptable to the Chief, FDS, of the replacement cost of the property lost, damaged, or destroyed or its repair cost if it is repairable.

(h) *Documentation of resulting economic loss.* Each application shall include proper and complete documentation of all facts necessary to substantiate the resulting economic loss as defined in § 258.31(m).

(1) In support of any claim for economic loss sutained on the vessel trip during which the casualty was discovered, the claimant shall submit:

(i) Copies of trip tickets (or other suitable documentation of gross income) for the three vessel trips immediately before that during which the casualty was discovered or, if these are not available, documentation of gross income for three other vessel trips nearest in time to that during which the casualty was discovered;

(ii) A statement of the number of gear units (traps, longlines, pots, gillnets, etc.) hauled on each of the three vessel trips; or if the casualty involves mobile gear, a statement of fishing time involved on each of the three vessel trips; and

(iii) If available, documentation (such as copies of relevant pages from the vessel's log book) supporting the statement of the number of gear units hauled or time involved on each of the three vessel trips.

(2) In support of any claim for resulting economic loss sustained on the next vessel trip after that on which the casualty was discovered, the applicant shall submit:

(i) A copy of a trip ticket (or other suitable documentation of gross income) for the vessel trip; and

(ii) A statement of the number of operable gear units in the applicant's total inventory.

(3) To establish the compensable period for resulting economic loss sustained following the next vessel trip after that during which the casualty was discovered, the claimant shall submit documentation establishing the date of order of the replacement gear and the date of its receipt, or the date repair began and ended (whichever is appropriate). Appropriate documentation may consist of purchase orders, bills of lading, or statements from commercial repair or supply sources.

(4) In support of any claim for resulting economic loss sustained during the compensable period, the applicant shall submit:

(i) If fishing is continued at a reduced level, copies of trip tickets (or other suitable documentation of gross income) for vessel trips made during the compensable period, along with a statement of the number of gear units (traps, longlines, pots, gillnets, etc.) deployed and hauled during each trip, and any available documentation (such as copies of relevant pages from the vessel's log book) supporting the statement of the number of gear units deployed and hauled during each trip;

(ii) If fishing is discontinued because of the casualty, copies of trip tickets (or other suitable documentation of gross income) for vessel trips made the previous year during the period corresponding to the compensable period, along with a statement of the number of gear units (traps, longlines, pots, gillnets, etc.) deployed during each trip and the number hauled during each trip, and any available documentation (such as copies of relevant pages from the vessel's log book) supporting the statement of the number of gear units deployed and hauled during each trip.

(i) *Witnesses.* Each application shall include:

(1) The name, address, and telephone number of each known witness to the casualty; and

(2) An affidavit from any material witness to the casualty setting forth material information possessed by such witness.

(j) *Efforts to retrieve fishing gear.* A full description of the actions taken to retrieve the fishing gear involved in the casualty must accompany the claim. The applicant is responsible for reporting any fishing gear retrieved to the Chief, FSD, whether retrieved before or after a decision is made on a claim.

(k) *Other evidence.* The Chief, FSD, may require an applicant to submit affidavits, information, explanations, or estimates in addition to those specified in this section.

(l) *Filing fee.* Each application for each casualty shall include a check or money order made payable to the National Marine Fisheries Service for a filing fee of $75. The filing fee is nonrefundable, except when the claim is withdrawn because the applicant has received or will receive compensation from another source.

(m) *Incomplete and abandoned applications.* All applications for compensation for property loss or for resulting economic loss under this subpart must be filed within 90 days after the date of discovery of the casualty. When necessary, however, additional time, as determined reasonable by the Chief, FSD, will be allowed to enable applicants to submit information and documentation required for the computation of resulting economic loss. As soon as practicable after receipt of an incomplete or improperly completed application, the Chief, FSD, shall so notify the applicant.

(1) If the application is incomplete or improperly completed with regard to the claim for compensation for actual loss, damage, or destruction, the Chief, FSD, shall notify the applicant, and the applicant shall have 60 calendar days following the date of notification to correct the deficiency. If the applicant without good cause fails to correct the deficiency within such 60-day period, the application will be considered abandoned.

(2) If the application is incomplete or improperly completed with regard to the claim for compensation for resulting economic loss, the Chief, FSD, may grant the applicant additional time as is deemed reasonable to correct the deficiency. If the applicant without good cause fails to correct the deficiency of the claim for resulting economic loss within the additional time allowed, the application will be considered abandoned.

(3) If a claim is considered abandoned because of the failure of the applicant to correct a deficiency after notice from the Chief, FSD, the claim shall not be eligible for compensation under this subpart.

(4) An application may be amended at any time before issuance of the initial determination specified in § 258.37. The Chief, FSD, will then make an initial determination on the application, as amended.

(Approved by the Office of Management and Budget under control number 0648-0094)

[46 FR 58805, Dec. 3, 1981, as amended at 48 FR 57302, Dec. 29, 1983]

§ 258.34 Rebuttable presumption of causation and proof of casualty.

(a) *Proof of casualty.* An applicant seeking compensation for a fishing vessel or gear casualty must submit evidence:

(1) That a casualty actually occurred; evidence of the occurrence may consist of affidavits of material witnesses (affidavits should be submitted by the vessel's Master and its crew);

(2) Of ownership of the vessel or gear involved in the casualty; evidence of gear ownership may consist of receipts, itemized income tax statements, cancelled checks, or affidavits of sellers; and

(3) That the gear involved in the casualty was deployed in conformity with customary usage and practice.

(b) *Rebuttable presumption.* Claims for unobserved casualties to fishing gear shall be afforded a rebuttable presumption that the damage, loss, or destruction is attributable to another vessel, its crew, or its gear. The presumption of causation for unobserved fishing gear casualties shall not apply to observed fishing vessel or fishing gear casualties.

(c) *Rebuttal of presumption.* In the case of an unobserved casualty, the Chief, FSD, may rebut the presumption that any damage, loss, or destruction of fishing gear is attributable to another vessel if there is sufficient evidence that:

(1) The casualty was caused by weather and sea conditions or other natural causes. Weather and sea conditions of storm intensity or greater (i.e., wind velocities of 48 knots or more) for the time and place of an unobserved casualty shall constitute sufficient evidence to rebut the presumption that the casualty was caused by another vessel. The Office of Oceanic and Atmospheric Services of the National Oceanic and Atmospheric Administration will provide data on weather and sea conditions for the general location and time of the casualty.

(2) The casualty resulted from the negligence or fault of the claimant or from a normal operating contingency; or

(3) The casualty resulted from some other cause unassociated with other vessels.

(d) *Proof after rebuttal of presumption.* Once the presumption of causation has been rebutted, the burden rests with the applicant to provide sufficient evidence that the damage, loss, or destruction of the fishing gear was in fact caused by other vessels.

§ 258.35 Amount of compensation for actual damage, loss, or destruction.

(a) *General.* The amount of compensation under this section is the amount determined in accordance with paragraph (b) of this section minus the sum of any deduction for the negligence of the applicant determined under paragraph (e) of this section and minus any deduction for insurance proceeds under paragraph (f) of this section.

(b) *Amount of compensation.* If the property concerned is determined by the Chief, FSD, to be repairable at a cost less than its depreciated replacement cost, the compensable amount is the repair cost. The compensable amount for property which is totally (actually or constructively) lost or destroyed is its depreciated replacement cost.

(c) *Depreciated replacement cost.* For purposes of this section the depreciated replacement cost is the present replacement cost of the property (at the time the claim is submitted) involved in the casualty, depreciated (on a straightline basis over the property's economically useful life) so as to exclude from the replacement cost the value of the property's economically useful life which is already expired. The present replacement cost is the lower of the two submitted estimates required to be submitted under § 258.33(g).

(d) *Economically useful life remaining.* (1) If the age, condition, and value of individual units of fishing gear involved in the casualty cannot be established to the satisfaction of the Chief, FSD, the Chief, FSD, shall use the average remaining economically useful life for all units identified in the inventory required by § 258.33 in calculating the depreciated replacement cost.

(2) If the average remaining economically useful life of fishing gear involved in the casualty is less than the average remaining economically useful life of all the property in the inventory required by § 258.33, the average remaining economically useful life of the fishing gear in the casualty will be used as the basis for calculating the depreciated replacement cost.

Example No. 1: (i) Applicant claims to have lost 100 crab pots with various remaining economically useful lives averaging 2.5 years. The applicant's fishing gear inventory shows that the applicant owns 500 crab pots (including the 100 involved in the casualty) with various remaining economically useful lives averaging 3.5 years.

(ii) The replacement cost of the 100 pots involved in the casualty will be depreciated as if they each had a remaining economically useful life of 2.5 years.

(iii) If the present replacement cost of the pots is $500 each and they have an economically useful life when new of 5 years, the depreciated replacement cost of each pot will be $250 (or 50 percent of the replacement cost), since 2.5 years (or 50 percent of their new economically useful life) was regarded as remaining at the time of the casualty.

(iv) Thus, the compensation would be 100 pots at a depreciated replacement cost of $250 each, for a total of $25,000.

(3) If the average remaining economically useful life of the fishing gear involved in the casualty is more than [illegible] average remaining economically useful life of all the fishing gear in the inventory required by § 258.33, the average remaining economically useful life of all the fishing gear in the inventory will be used as the basis for calculating the depreciated replacement cost.

Example No. 2: If the 100 crab pots described in Example No. 1 above, had an average remaining economically useful life of 4 years (instead of 2.5 years), then the 3.5-year average remaining economically useful life of all the fishing gear in the inventory would be used as the basis for depreciating the cost of the replacement pots. Since 3.5 years is 70 percent of the new economically useful life (5 years) of the pots, the compensation would be $35,000 (70 percent of $500 equals $350 times 100 pots equals $35,000).

(e) *Comparative negligence.* In calculating the amount of compensation under this section, the compensable amount determined under paragraph (b) of this section will be reduced proportionally to the extent that any negligence of the applicant (or the applicant's agents) contributed to the cause or extent of the casualty.

Example: If the applicant's total damages (property and resulting economic loss) were $25,000 and 10 percent of the damages were the result of the applicant's negligence, the applicant would receive $22,500 in compensation. If the negligence of the applicant had caused 90 percent of the loss, $2,500 in compensation would be paid.

(f) *Insurance proceeds.* For purposes of calculating the amount of compensation under this section, the amount of compensation determined under paragraph (b) of this section will be reduced by the amount the applicant has, or reasonbly would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred. Recovery will be allowed for a reasonable deductible as set forth in § 258.32(f).

§ 258.36 Compensation for resulting economic loss.

(a) *General.* Applicants shall be eligible to receive compensation for up to 25 percent of the gross income lost as a direct result of the casualty with respect to which the claim is filed. The amount of compensation will be reduced proportionally to the extent that any negligence of the applicant (or applicant's agents) contributed to the cause or extent of the casualty. (See example of proportionate reduction under § 258.35(e)). No compensation will be paid for economic loss resulting from a gear or vessel casualty for which a vessel owner or operator is not otherwise entitled to compensation for property loss under this subpart. Compensation will be made for up to 25 percent of:

(1) Gross income lost on the vessel trip during which the casualty was discovered; and

(2) Gross income lost on the next vessel trip which was made or, if fishing is discontinued because of the casualty, would have been made after the vessel trip of the casualty, if the gear involved in the casualty was not replaced or repaired between the vessel trip of the discovery of the casualty and the next vessel trip; and

(3) Gross income lost within the compensable period specified in paragraph (b) of this section on vessel trips made at a reduced level of effort because of the casualty or, if fishing is discontinued because of the casualty, on vessel trips which would normally have been made at full operational capacity.

(b) *Compensable period.* Except as specified in paragraph (a)(2) of this section, applicants will be eligible for compensation for income lost after the vessel trip on which the casualty was discovered only during the period between the dates of order and receipt of replacement gear or the dates repair begins and ends (whichever is appropriate), or such other period as the Chief, FSD, determines to be reasonable.

(c) *Calculation of economic loss for the vessel trip of discovery of casualty.* Compensation for economic loss on the vessel trip during which the casualty was discovered shall be determined as follows:

(1) For casualties involving fixed gear by:

(i) Totaling the dollar value of the catch for the three vessel trips immediately before the trip of the casualty, or the three trips nearest in time to that of the casualty, if the former is unavailable;

(ii) Dividing this total value by the total number of gear units hauled during these three trips;

(iii) Multiplying this average dollar value per gear unit times the number of units lost or damaged; and

(iv) Computing 25 percent of the result.

(2) For casualties involving mobile gear by:

(i) Totaling the dollar value of the catch for the three vessels trips immediately before the trip of the casualty, or the three trips nearest in time to that of the casualty if the former is unavailable;

(ii) Dividing this total value by the total number of units (hours, days) of fishing time during these three trips;

(iii) Multiplying this average dollar value per unit of fishing time times the number of units of fishing time lost as a result of the casualty; and

(iv) Computing 25 percent of the result.

(d) *Calculation of economic loss on the next vessel trip after the discovery of the casualty.* (1) If fishing is continued at a reduced level of effort because of the casualty, compensation for resulting economic loss on the next vessel trip made after the discovery of the casualty shall be computed by dividing the value of the catch by the number of operable gear units (units in the total inventory minus those involved in the casualty); multiplying this average value per gear unit times the number of units involved in the casualty; and computing 25 percent of the result.

(2) If fishing is discontinued because of the casualty, the compensation for economic loss on the next vessel trip which would normally have been made shall be the same as the amount computed under paragraph (c)(1) of this section.

(e) *Calculation of economic loss during the compensable period.* Resulting economic loss suffered during the compensable period may result from an inability to fish or from fishing at a reduced level of effort because of the casualty. In either case, the calculation of the amount of the loss shall be based upon:

(1) The number of gear units lost, or damaged, or destroyed in the casualty or, in the case of mobile gear, the amount of fishing time lost;

(2) The length of the compensable period;

(3) The number of gear units hauled on each vessel trip made during the compensable period or during the corresponding period of the previous year;

(4) Information, such as amount and value of catch, available from trip tickets, or other suitable documentation, for the vessel trips made during the compensable period or the corresponding period of the previous year; and

(5) The number of operable gear units in the claimant's complete inventory under § 258.33(f)(1).

§ 258.37 Initial determination.

After receipt of an application which is properly completed as to claims for actual loss, damage, or destruction, the Chief, FSD will make an initial determination of the amount of any compensation to be paid the applicant for such loss, damage, or destruction. After receipt of all required information and documentation of resulting economic loss, the Chief, FSD, will make an initial determination of the amount of any compensation to be paid to the applicant for resulting economic loss.

(a) *Contents.* An initial determination shall state:

(1) If the application is disapproved, the reasons therefore; or

(2) If the application is approved, the amount of compensation and the

basis upon which the amount was determined.

(b) *Notice.* The initial determination, along with the subrogation agreement (where applicable) provided for in § 258.38, shall be mailed to the applicant.

§ 258.38 Final determination.

(a) *Final determination.* Unless appealed under paragraph (b) of this section the initial determination of the Chief, FSD, shall become final 30 days after its issuance under § 258.37.

(b) *Appeal.* Any applicant may, within 30 days after the date of issuance of an initial determination under § 258.37, file with the Assistant Administrator at 3300 Whitehaven Street, Washington, DC 20235 a written request for review of the initial determination.

(c) *Additional evidence.* The applicant may submit to the Assistant Administrator written data relating to the initial determination no later than 30 calendar days after the filing of a petition under paragraph (b) of this section.

(d) *Appellate determination.* The Assistant Administrator shall issue a final determination on an appealed application within 60 days of the submission of any written data by the applicant under paragraph (c) of this section. A copy of the final determination shall be mailed to the applicant.

§ 258.39 Subrogation.

(a) After approval of an applicant's claim, but before compensation is disbursed, the applicant shall execute a subrogation agreement in a form satisfactory to the Chief, FSD, which:

(1) Assigns to the United States all rights which the applicant may have to proceed against any party who may be liable for damages with respect to any part of a casualty for which compensation is being made hereunder, and;

(2) Requires, as a condition of continuing to retain any compensation, that the applicant assist the Chief, FSD, in any reasonable way to pursue collection of the subrogated rights.

§ 258.40 Payments.

(a) *Amount.* The Chief, FSD, shall compensate the applicant in the amount calculated under §§ 258.35 and 258.36 minus the approval fee as determined according to the paragraph (b) of this section. Payment shall be made to the applicant upon receipt of a properly executed subrogation agreement under § 258.39.

(b) *Approval fee.* The approval fee is four percent (4%) of the amount of compensation calculated under §§ 258.35 and 258.36, but in no case shall the sum of the approval fee and the filing fee under § 258.33(l) exceed $2,000.

§ 258.41 Penalties.

Persons who willfully make any false or misleading statement or representation for the purpose of obtaining compensation under this subpart are subject to criminal prosecution pursuant to the provisions of 22 U.S.C. 1980(g), which provides penalties, upon conviction, of a fine of not more than $25,000, or imprisonment for not more than one year, or both. Any evidence of false or misleading statements or representations will be promptly forwarded to the U.S. Department of Justice for action.

PART 259—CAPITAL CONSTRUCTION FUND

JOINT TAX REGULATIONS

Sec.
259.1 Execution of agreements and deposits made in a Capital Construction Fund.

CAPITAL CONSTRUCTION FUND AGREEMENT

259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").
259.31 Acquisition, construction, or reconstruction.
259.32 Conditional fisheries.
259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.
259.34 Minimum and maximum deposits; maximum time to deposit.
259.35 Annual deposit and withdrawal reports required.

Sec.
259.36 CCF accounts.
259.37 Conditional consents to withdrawal qualification.
259.38 Miscellaneous.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; Pub. L. 91-469, 84 Stat. 1018; sec. 21(a), 84 Stat. 1026. Sections 259.30 to 259.38 also issued under Reorg. Plan No. 4 of 1970, 86 Stat. 9090.

JOINT TAX REGULATIONS

§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where: (1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and (2) for taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital construction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.

(c) (1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.[1]

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

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[1] The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

CAPITAL CONSTRUCTION FUND AGREEMENT

SOURCE: Sections 259.30 to 259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

§ 259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

(a) *General qualifications.* To be eligible to enter into an Interim CCF Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined in sec. 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(3) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR Part 176) by the U.S. Coast Guard as qualified to carry more than six passengers or demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant's actual intentions. Vague or contingent objectives will not be acceptable.

(b) *Content of application.* Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each "eligible vessel" which is to be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Official number, or, in the case of vessels under 5 net tons, the State registration number where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which vessel is documented and date last documented,

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common names—of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) If a fishing vessel, the area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources).

(4) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Interim CCF Agreement) including:

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age,

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length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidences of the indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF under an Interim CCF Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

(vii) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) *Filing.* The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

(Approved by the Office of Management and Budget under control number 0648-0090)

[39 FR 33675, Sept. 19, 1974, as amended at 42 FR 65185, Dec. 30, 1978; 48 FR 57302, Dec. 29, 1983]

§ 259.31 Acquisition, construction, or reconstruction.

(a) *Acquisition.* No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) *Reconstruction.* No reconstruction project costing less than $100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets the $100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the $100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

(d) *Energy saving improvements.* An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32 and from all qualifying tests for reconstruction set forth in paragraph (b) of this section with the following exceptions:

(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(Sec. 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177))

[39 FR 33675, Sept. 19, 1974, as amended at 46 FR 54563, Nov. 3, 1981]

§ 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is Part 251 of this chapter. Each fishery so restricted is termed a "conditional fishery". Subpart A of Part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of Part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (Part 251 of this chapter should be referred to for details). The purpose of this § 259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal

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manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel "Y") for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the "Y" vessel to be constructed causes (within 1 year after the delivery of vessel "Y") to be permanently removed from all fishing, or placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel "Z") which has during the previous 18 months operated substantially in the same fishery as the "Y" vessel and which has a fishing capacity substantially equivalent to the "Y" vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for the Secretary's discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel "Z" was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel "Z" entered it), (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel "Y" was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel "Z" and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who

have owned or leased for substantial periods vessels which need to be replaced, even though a "Z" vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a "Y" vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had, immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-ration shall be according to the number of months or any part thereof in a party's tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party's tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party's tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary's consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary's consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be

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disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary's consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no forseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this § 259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted under paragraph (e) of this § 259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.

(a) *Periods controlling permissibility.* For the purpose of this § 259.33, the period between the beginning and the end of a party's tax year is designated "Period (aa)"; the period between the end of a party's tax year and the party's tax due date for that tax year is designated "Period (bb)"; the period between the party's tax due date and the date on which ends the party's last extension (if any) of that tax due date is designated "Period (cc)".

(b) *Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date).* Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: *Provided,* The applicant's application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary's execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary willl nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant's having failed to apply in a more timely fashion.

(c) *Constructive deposits (after Interim CCF Agreement effectiveness date).* The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) *Ratification of withdrawals (as-qualified) made without first having obtained Secretary's consent.* The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary's consent therefor, provided the withdrawal was such as would have resulted in the Secretary's consent had it been requested before withdrawal, and provided further that the party's request for consent (together with sufficient supporting data to enable issuance of the Secretary's consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary's consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one to which the Secretary will not or cannot consent by ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) *First tax year for which Interim CCF Agreement is effective.* An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), which-

ever applies, for the Period (aa) for which the Agreement is first intended to be effective.

§ 259.34 Minimum and maximum deposits; maximum time to deposit.

(a) *Minimum annual deposit.* The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more than 3 taxable years in advance of the taxable year in which the agreement is effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit requirement in past or future years: *Provided, however,* At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the 50 percent of taxable income situation applies).

(2) The Secretary may, at his discretion and for good and sufficient cause shown, consent to minimum annual deposits in any given tax year or combination of tax years in an amount lower than prescribed herein: *Provided,* The party demonstrates to the Secretary's satisfaction the availability of sufficient funds from any combination of sources to accomplish Schedule B objectives at the time they are scheduled for accomplishment.

(b) *Maximum deposits.* Other than the maximum annual ceilings established by the Act, the Secretary shall not establish a maximum annual ceiling: *Provided, however,* That deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives, unless the Interim CCF Agreement is then amended to establish additional Schedule B objectives.

(c) *Maximum time to deposit.* Ten years shall ordinarily be the maximum time the Secretary shall permit in which to accumulate deposits prior to commencement of any given Schedule B objective. A time longer than 10 years, either by original scheduling or by subsequent extension through amendment, may, however, be permitted at the Secretary's discretion and for good and sufficient cause shown.

§ 259.35 Annual deposit and withdrawal reports required.

(a) The Secretary shall require from each Interim CCF agreement holder annual deposit and withdrawal report for each tax year, on a form prescribed by the Secretary, not later than 30 days after expiration of the due date, with extensions (if any), for filing the party's tax return. The required annual deposit and withdrawal reports shall be submitted for each scheduled depository, even if the reports are negative. Each report shall bear the account number of each CCF account in each scheduled depository. Each withdrawal report shall contain the party's certification that there were during the tax year involved no withdrawals other than those enumerated on the withdrawal report.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

(Approved by the Office of Management and Budget under control number 0648-0041)

[39 FR 33675, Sept. 19, 1974, as amended at 48 FR 57302, Dec. 29, 1983]

§ 259.36 CCF accounts.

(a) *General:* Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by § 259.35. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non CCF transactions and there shall be no pooling of 2 or more CCF accounts without prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent and then only under such conditions as the Secretary, in his discretion, prescribes.

(b) *Assignment:* The use of Fund assets for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories:* (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may specify.

(2) Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

(3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:

(i) The trustee should be specified in the Agreement;

(ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;

(iii) The trust instrument should provide that the trustee will give consideration to the party's withdrawal requirements under the Agreement when investing the Fund;

(iv) The trustee must agree to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the Fund.

§ 259.37 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary's discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

§ 259.38 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:

(1) The vessel age limitations imposed by § 259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by § 259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§ 259.30 through 259.38 are adopted.

(e) These §§ 259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

PART 260—INSPECTION AND CERTIFICATION

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

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AUTHORITY: Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

SOURCE: 31 FR 16052, Dec. 15, 1966, unless otherwise noted.

Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

§ 260.1 Administration of regulations.

The Secretary of Commerce is charged with the administration of the regulations in this part except that he may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service of the Department in his discretion.[1]

[36 FR 21037, Nov. 3, 1971]

DEFINITIONS

§ 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the following terms shall have the following meanings:

Acceptance number. "Acceptance number" means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.

Act. "Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621 et seq.).

Applicant. "Applicant" means any interested party who requests inspection service under the regulations in this part.

Case. "Case" means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

Certificate of loading. "Certificate of loading" means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

Certificate of sampling. "Certificate of sampling" means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

Class. "Class" means a grade or rank of quality.

Condition. "Condition" means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to those factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

Department. "Department" means the U.S. Department of Commerce.

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[1] All functions of the Department of Agriculture which pertain to fish, shellfish, and any products thereof, now performed under the authority of Title II of the Act of August 14, 1946, popularly known as the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) including but not limited to the development and promulgation of grade standards, the inspection and certification, and improvement of transportation facilities and rates for fish and shellfish and any products thereof, were transferred to the Department of the Interior by the Director of the Budget (23 FR 2304) pursuant to section 6(a) of the Act of Aug. 8, 1956, popularly known as the Fish and Wildlife Act of 1956 (16 U.S.C. 742e). Reorganization Plan No. 4 of 1970 (84 Stat. 2090) transferred, among other things, such functions from the U.S. Department of the Interior to the U.S. Department of Commerce.

Deviant. "Deviant" means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

Deviation. "Deviation" means any specifically defined variation from a particular requirement.

Director. "Director" means the Director of the National Marine Fisheries Service.

Establishment. "Establishment" means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

Inspection certificate. "Inspection certificate" means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

Inspection service. "Inspection service" means:

(1) The sampling pursuant to the regulations in this part;

(2) The determination pursuant to the regulations in this part of:

(i) Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;

(ii) The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples;

(3) The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or

(4) Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

Inspector. "Inspector" means any employee of the Department authorized by the Secretary or any other person licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

Interested party. "Interested party" means any person who has a financial interest in the commodity involved.

Licensed sampler. "Licensed sampler" means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

Lot. "Lot" has the following meanings:

(1) For the purpose of charging fees and issuing certificates, "Lot" means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: *Provided,* That:

(i) Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;

(ii) Containers in a pile bearing an identification mark different from other containers of such processed product in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and

(iii) If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.

(2) For the purpose of sampling and determining the grade or compliance with a specification, "Lot" means each pile of containers of the same size and type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that pile may be deemed to be a separate lot.

Official establishment. "Official establishment" means any establishment which has been approved by National Marine Fisheries Service, and utilizes inspection service on a contract basis.

Officially drawn sample. "Officially-drawn sample" means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Secretary pursuant to the regulations in this part.

Person. "Person" means any individual, partnership, association, business trust, corporation, any organized group of persons (whether incorporated or not), the United States (including, but not limited to, any corporate agencies thereof), any State, county, or municipal government, any common carrier, and any authorized agent of any of the foregoing.

Plant. "Plant" means the premises, buildings, structures, and equipment (including, but not being limited to, machines, utensils, and fixtures) employed or used with respect to the manufacture or production of processed products.

Processed product. "Processed product" means any fishery product or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

Quality. "Quality" means the inherent properties of any processed product which determine the relative degree of excellence of such product, and includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

Rejection number. "Rejection number" means the number in a sampling plan that indicates the minimum number of deviants in a sample that will cause a lot to fail a specific requirement.

Sample. "Sample" means any number of sample units to be used for inspection.

Sample unit. "Sample unit" means a container and/or its entire contents, a portion of the contents of a container or other unit of commodity, or a composite mixture of a product to be used for inspection.

Sampling. "Sampling" means the act of selecting samples of processed products for the purpose of inspection under the regulations in this part.

Secretary. "Secretary" means the Secretary of the Department or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary in respect to the matters covered by the regulations in this part.

Shipping container. "Shipping container" means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing unpackaged processed products for shipping.

Unofficially drawn sample. "Unofficially drawn sample" means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Director pursuant to the regulations in this part.

Wholesome. "Wholesome" means the minimum basis of acceptability for human food purposes, of any fish or fishery product as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 21037, Nov. 3, 1971]

§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

Official certificate. "Official certificate" means any form of certification, either written or printed, including those defined in § 260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

Official device. "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Official identification. "Official identification" means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

Official mark. "Official mark" means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in § 260.86, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

Official memorandum. "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

INSPECTION SERVICE

§ 260.12 Where inspection service is offered.

Inspection service may be furnished wherever an inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service.

§ 260.13 Who may obtain inspection service.

An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

§ 260.14 How to make application.

An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

§ 260.15 Information required in connection with application.

Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.

§ 260.16 Filing of application.

An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 260.17 Record of filing time.

A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

§ 260.18 When application may be rejected.

An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

§ 260.19 When application may be withdrawn.

An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: *Provided*, That, the applicant shall pay at the hourly rate prescribed in § 260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.20 Disposition of inspected sample.

Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

§ 260.21 Basis of inspection and grade or compliance determination.

(a) Inspection service shall be performed on the basis of the appropriate U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: *Provided*, That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: *Provided further*, That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade; and

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in § 260.61. A "deviant," as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeedingly lower grades until the grade of the lot, if assignable, is established.

§ 260.22 Order of inspection service.

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 260.23 Postponing inspection service.

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

§ 260.24 Financial interest of inspector.

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

§ 260.25 Forms of certificates.

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

§ 260.26 Issuance of certificates.

(a) An inspection certificate may be issued only by an inspector: *Provided*, That, another employee of the inspection service may sign any such certificate covering any processed product inspected by an inspector when given power of attorney by such inspector and authorized by the Secretary, to affix the inspector's signature to an inspection certificate which has been prepared in accordance with the facts set forth in the notes, made by the inspector, in connection with the inspection.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: *Provided*, That, another employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector's or licensed sampler's signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

§ 260.27 Issuance of corrected certificates.

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: *Provided*, That, the issuance of such report is approved by the Secretary.

§ 260.29 Disposition of inspection certificates.

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall be filed in such manner as the Secretary may designate. Additional copies of any such certificates may be supplied to any interested party as provided in § 260.78.

§ 260.30 Report of inspection results prior to issuance of formal report.

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

APPEAL INSPECTION

§ 260.36 When appeal inspection may be requested.

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

§ 260.37 Where to file for an appeal inspection and information required.

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

§ 260.38 When an application for an appeal inspection may be withdrawn.

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: *Provided*, That the applicant shall pay at the hourly rate prescribed in § 260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

§ 260.39 When appeal inspection may be refused.

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as

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the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 260.40 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: *Provided*, That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when another inspector or licensed sampler is not available in the area where the product is located.

§ 260.41 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

LICENSING OF SAMPLERS AND INSPECTORS

§ 260.47 Who may become licensed sampler.

Any person deemed to have the necessary qualifications may be licensed as a licensed sampler to draw samples for the purpose of inspection under the regulations in this part. Such a license shall bear the printed signature of the Secretary, and shall be countersigned by an authorized employee of the Department. Licensed samplers shall have no authority to inspect processed products under the regulations in this part except as to identification and condition of the containers in a lot. A licensed sampler shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.48 Application to become a licensed sampler.

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:

(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;

(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;

(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and

(d) Such other information as may be requested.

§ 260.49 Inspectors.

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.

§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

§ 260.51 Surrender of license.

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

SAMPLING

§ 260.57 How samples are drawn by inspectors or licensed samplers.

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

§ 260.58 Accessibility for sampling.

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

§ 260.59 How officially drawn samples are to be identified.

Officially drawn samples shall be marked by the inspector or licensed sampler so such samples can be properly identified for inspection.

§ 260.60 How samples are to be shipped.

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed prodcuts from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.

§ 260.61 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with inplant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: *Provided*, That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement; or

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.

(d) If in the conduct of any type of in-plant inspection the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word "deviation" for the word "deviant" wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable.

For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.

SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS

TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

[See footnotes at end table]

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of less volume than that of a No. 300 size can (300×407)	3,600 or less	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	Over 420,000
GROUP 2 Any type of container of a volume equal to or exceeding that of a No. 300 size can, but not exceeding that of a No. 3 cylinder size can (404×700)	2,400 or less	2,401-12,000	12,001-24,000	24,001-48,000	48,001-72,000	72,001-108,000	108,001-168,000	168,001-240,000	Over 240,000
GROUP 3 Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can (603×812)	1,200 or less	1,201-7,200	7,201-15,000	15,001-24,000	24,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000

SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS—Continued

TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

[See footnotes at end table]

Container size group	Lot size (number of containers)								
GROUP 4 Any type of container of a volume exceeding that of a No. 12 size can, but not exceeding that of a 5-gallon container	200 or less	201–800	801–1,600	1,601–2,400	2,401–3,600	3,601–8,000	8,001–16,000	16,001–28,000	Over 28,000
GROUP 5 Any type of container of a volume exceeding that of a 5-gallon container	25 or less	26–80	81–200	201–400	401–800	801–1,200	1,201–2,000	2,001–3,200	Over 3,200
	Single sampling plans[1]								
Sample size (number of sample units)[2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	

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[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

[See footnotes at end of table.]

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	2,400 or less	2,401-12,000	12,001-24,000	24,001-48,000	48,001-72,000	72,001-108,000	108,001-168,000	168,001-240,000	Over 240,000
GROUP 2 Any type of container over 1 pound but not over 4 pounds net weight	1,800 or less	1,801-8,400	8,401-18,000	18,001-36,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000
GROUP 3 Any type of container over 4 pounds but not over 10 pounds net weight	900 or less	901-3,600	3,601-10,800	10,801-18,000	18,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000
GROUP 4 Any type of container over 10 pounds but not over 100 pounds net weight	200 or less	201-800	801-1,600	1,601-2,400	2,401-3,600	3,601-8,000	8,001-16,000	16,001-28,000	Over 28,000
GROUP 5 Any type of container over 100 pounds net weight	25 or less	26-30	31-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
					Single sampling plans [1]				
Sample size (number of sample units) [2]	3	6	13	21	29	38	48	60	72

TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

[See footnotes at end of table.]

Container size group	Lot size (number of containers)								
Acceptance number	0	1	2	3	4	5	6	7	8

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[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE

[See footnotes at end of table.]

Container size group [1]	Lot size (number of containers)								
GROUP 1 Any type of container of 12 ounces or less	5,400 or less	5,401-21,600	21,601-62,400	62,401-112,000	112,001-174,000	174,001-240,000	240,001-360,000	360,001-480,000	Over 480,000
GROUP 2 Any type of container over 12 ounces but not over 60 ounces	3,600 or less	3,601-14,400	14,401-48,000	48,001-96,000	96,001-156,000	156,001-228,000	228,001-300,000	300,001-420,000	Over 420,000
GROUP 3 Any type of container over 60 ounces but not over 160 ounces	1,800 or less	1,801-8,400	8,401-18,000	18,001-60,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000

GROUP 4 Any type of container over 160 ounces but not over 10 gallons or 100 pounds whichever is applicable	200 or less	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	Over 32,000
GROUP 5 Any type of container over 10 gallons or 100 pounds whichever is applicable	25 or less	26-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
	Single sampling plans[2]								
Sample size (number of sample units)[3]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

[1] Ounces pertain to either fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.

[2] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[3] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

[See footnotes at end of table.]

Container size group	Lot size (number of containers)								
GROUP 1 Any type of container of 1 pound or less net weight	1,800 or less	1,801-8,400	8,401-18,000	18,001-36,000	36,001-60,000	60,001-96,000	96,001-132,000	132,001-168,000	Over 168,000

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

[See footnotes at end of table.]

Container size group	Lot size (number of containers)								
GROUP 2									
Any type of container over 1 pound but not over 6 pounds net weight	900 or less	901-3,600	3,601-10,800	10,801-18,000	18,001-36,000	36,001-60,000	60,001-84,000	84,001-120,000	Over 120,000
GROUP 3									
Any type of container over 6 pounds but not over 20 pounds net weight	200 or less	201-800	801-1,600	1,601-3,200	3,201-8,000	8,001-16,000	16,001-24,000	24,001-32,000	Over 32,000
GROUP 4									
Any type of container over 20 pounds but not over 100 pounds net weight	48 or less	49-400	401-1,200	1,201-2,000	2,001-2,800	2,801-6,000	6,001-9,600	9,601-15,000	Over 15,000
GROUP 5									
Any type of container over 100 pounds net weight	16 or less	17-80	81-200	201-400	401-800	801-1,200	1,201-2,000	2,001-3,200	Over 3,200
	Single sampling plans [1]								
Sample size (number of sample units) [2]	3	6	13	21	29	38	48	60	72
Acceptance number	0	1	2	3	4	5	6	7	8

[1] For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

[2] The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

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TABLE V—SINGLE SAMPLING PLANS FOR USE IN INCREASING SAMPLE SIZE BEYOND 72 SAMPLE UNITS

Sample size, n	84	96	108	120	132	144	156	168	180	192	204	216	230	244	258	272	286	300	314	328	342	356	370	384	400
Acceptance numbers, c	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33

MULTIPLE SAMPLING PLANS[1]

TABLE VI—MULTIPLE SAMPLING PLANS COMPARABLE TO THE INDICATED SINGLE SAMPLING PLANS

[See footnotes at end of table.]

Indicated single sampling plan Single sample size, n	6			13			21			29			38			48			60			72		
Acceptance numbers, c	1			2			3			4			5			6			7			8		
Cumulative sample sizes, n_t, and acceptance numbers, c, and rejection numbers, r, for multiple sampling	n_t	c	r	n_t	c	r	n_t	c	r	n_t	c	r	n_t	c	r	n_t	c	r	n_t	c	r	n_t	c	r
	4	0	2	6	0	3	10	0	3	12	0	4	14	0	4	16	0	4	18	0	5	22	0	5
	6	0	2	10	0	3	14	1	4	16	0	4	20	0	5	24	1	5	28	1	6	32	1	7
	8	1	2	12	1	3	18	1	4	20	1	5	26	1	6	32	2	6	38	2	7	42	2	8
				14	2	3	22	2	5	24	2	5	32	2	6	40	3	8	48	3	8	52	3	9
							26	4	5	28	3	6	38	3	7	48	4	8	58	4	8	62	5	10
										32	3	6	44	6	7	56	7	[illegible]	68	8	9	72	6	10
										36	5	6										82	9	10

[1] These multiple sampling plans may be used in lieu of the single sampling plans listed at the heading of each column

§ 260.62 Issuance of certificate of sampling.

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

§ 260.63 Identification of lots sampled.

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do not otherwise possess suitable identification.

FEES AND CHARGES

§ 260.69 Payment fees and charges.

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, or a surety bond suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21038, Nov. 3, 1971]

§ 260.70 Schedule of fees.

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, will be published as a notice in the FEDERAL REGISTER and will be in accordance with § 260.81.

(b) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered.

(1) The TYPE I (Contract Inspection) hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(2) The TYPE II (Lot Inspection) hourly fee is determined by adding a factor of 50 percent to the TYPE I fee, to cover additional costs (down-time, etc.) associated with conducting lot inspection services.

(3) The TYPE III (Miscellaneous and Consulting) hourly fee is determined by adding a factor of 25 percent to the TYPE I fee, to cover the additional costs (down-time, etc.) associated with conducting miscellaneous inspection services.

[48 FR 24901, June 3, 1983]

§ 260.71 Fee for inauguration of inspection service on a contract basis.

Prior to inauguration of inspection service, a fee of $25.00 per contract hour of inspection service will be charged and collected following completion of the final establishment survey and approval of it as an official establishment. The number of hours to which the fee for inauguration applies is the minimum number of manhours of inspection per week determined in accordance with § 260.97(a).

[41 FR 2395, Jan. 16, 1976; 41 FR 25015, June 22, 1976]

§ 260.72 Fees for inspection service performed under cooperative agreement.

The fees to be charged and collected for any inspection or similar service performed under cooperative agree-

BEST CO ...ABLE

ment shall be those provided for by such agreement.

§ 260.73 Disposition of fees for inspections made under cooperative agreement.

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with § 260.69.

§ 260.74 Fee for appeal inspection.

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: *Provided*, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

§ 260.76 [Reserved]

§ 260.77 Fees for score sheets.

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be changed at the rate of $2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

§ 260.78 Fees for additional copies of inspection certificates.

Additional copies of any inspection certificate other than those provided for in § 260.29, may be supplied to any interested party upon payment of a fee of $2.75 for each set of five (5) or fewer copies.

§ 260.79 Travel and other expenses.

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: *Provided*, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: *And provided further*, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

§ 260.80 Charges for inspection service on a contract basis.

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

§ 260.81 Readjustment and increase in hourly rates of fees.

(a) When Federal Pay Act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: *Provided*, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[35 FR 15925, Oct. 9, 1970]

MISCELLANEOUS

§ 260.86 Approved identification.

(a) *Grade marks:* The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such grade, quality or classification.

The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

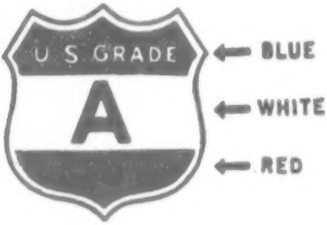

FIGURE 1

Shield with plain background.

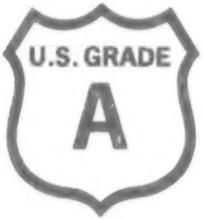

FIGURE 2

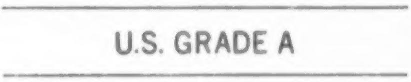

FIGURE 3

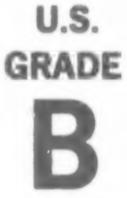

FIGURE 4

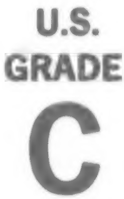

FIGURE 5

(b) *Inspection marks:* The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such quality or grade classification as may be approved by the Secretary.

The inspection marks approved for use shall be similar in form and design to the examples in Figures 6, 7, and 8 of this section.

Statement enclosed within a circle.

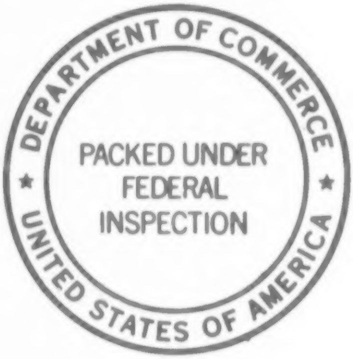
DEPARTMENT OF COMMERCE
PACKED UNDER
FEDERAL
INSPECTION
UNITED STATES OF AMERICA

FIGURE 6.

Statement without the use of the circle.

PACKED UNDER
FEDERAL
INSPECTION

U.S. DEPARTMENT
OF COMMERCE

FIGURE 7.

Statement without the use of the circle.

PACKED BY

UNDER FEDERAL INSPECTION
U.S. DEPT. OF COMMERCE

FIGURE 8.

(c) *Combined grade and inspection marks:* The grade marks set forth in paragraph (a) of this section, and the inspection marks, Figures 7 and 8, set forth in paragraph (b) of this section, may be combined into a consolidated grade and inspection mark for use on processed products that have been packed under inspection as provided in this part.

(d) *Products not eligible for approved identification:* Processed products which have not been packed under inspection as provided in this part shall not be identified by approved grade or inspection marks, but such products may be inspected on a lot inspection basis as provided in this part and identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) as appropriate, with marks similar in form and design to the examples in Figures 9 and 10 of this section.

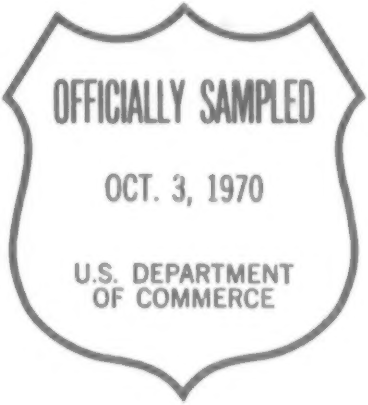
OFFICIALLY SAMPLED
OCT. 3, 1970
U.S. DEPARTMENT
OF COMMERCE

FIGURE 9

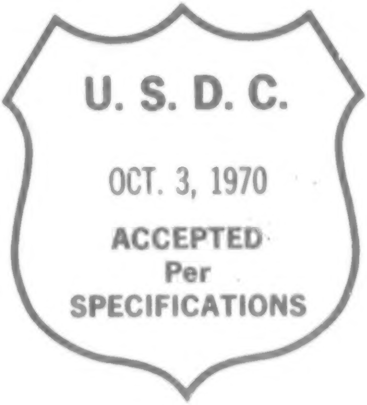
U. S. D. C.
OCT. 3, 1970
ACCEPTED
Per
SPECIFICATIONS

FIGURE 10

(e) *Removal of labels bearing inspection marks:* At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

(1) The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a "rejected by USDC Inspector" stamp provided by the Department.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

(3) Clearance for the release of the relabeled products shall be obtained by the processor from the inspector.

(f) Users of inspection services having an inventory of labels which bear official approved identification marks stating "U.S. Department of the Interior" or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]

§ 260.88 Political activity.

All inspectors and licensed samplers are forbidden, during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, are prohibited. This applies to all appointees or licensees, including, but not limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 260.90 Compliance with other laws.

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

§ 260.91 Identification.

Each inspector and licensed sampler shall have in his possession at all times and present upon request, while on duty, the means of identification furnished by the Department to such person.

§ 260.93 Debarment and suspension.

(a) *Debarment.* Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more plants under his control, if such person engages in one or more of the following acts or activities:

(1) Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

(2) Using on a processed product any label which displays any official identification, official device, or official mark when the label is not currently approved for use by the Director or his delegate.

(3) Using on a processed product any label which displays the words "Packed Under Federal Inspection, U.S. Department of Commerce", or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, of-

ficial device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms "United States", "Officially graded", "Officially inspected", "Government inspected", "Federally inspected", "Officially sampled", or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) *Temporary suspension.* (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five (5) days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with paragraph (b)(1), *Decisions*, of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) *Hearing Examiner.* All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) *Hearing.* If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) *Notice of hearing.* The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Director: *Provided, however,* The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) *Right to counsel.* In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in Title 43, Code of Federal Regulations, Part 1.

(h) *Form, execution, and service of documents.* (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by:

(i) The person or persons filing same, (ii) by an authorized officer thereof if it be a corporation or, (iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at ——— this ——— day of ———, 19—

Signature ————————

(i) *Procedures and evidence.* (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) *Duties of Hearing Examiner.* The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.

(2) Regulate the course of the hearings.

(3) Prescribe the order in which evidence shall be presented.

(4) Dispose of procedural requests or similar matters.

(5) Hear and initially rule upon all motions and petitions before him.

(6) Administer oaths and affirmations.

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.

(12) Do all other things necessary for an orderly and impartial hearing.

(k) *The record.* (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

(l) *Decisions.* (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred, and the plants to which the debarment shall apply.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

Requirements for Plants Operating Under Continuous Inspection on a Contract Basis[1]

§ 260.96 Application for Fishery Products Inspection Service on a contract basis at official establishments.

Any person desiring to process and pack products in an establishment under fishery products inspection service on a contract basis, must receive approval of such buildings and facilities as an official establishment prior to the inauguration of such service. An application for inspection service to be rendered in an establishment shall be approved according to the following procedure:

(a) Initial survey: When application has been filed for inspection service as aforesaid, NMFS inspector(s) shall examine the buildings, premises, and facilities according to the requirements of the fishery products inspection service and shall specify any additional facilities required for the service.

(b) Final survey and establishment approval: Prior to the inauguration of the fishery products inspection service, a final survey of the buildings, premises, and facilities shall be made to verify that the buildings are constructed and facilities are in accordance with the approved drawings and the regulations in this part.

(c) Drawings and specifications of new construction or proposed alterations of existing official establishments shall be furnished to the Director in advance of actual construction for prior approval with regard to compliance with requirements for facilities.

[36 FR 21039, Nov. 3, 1971]

§ 260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and cooperation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw materials for processing as may be necessary to conform to the sanitary requirements precribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to

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[1] Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jursidiction over such establishments and operations.

any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: *Provided*, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s);

(11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official correspondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under Federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;

(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and

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official establishment(s) under applicant's control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) By mutual consent; (ii) by either party giving the other party sixty (60) days' written notice specifying the date of suspension or termination; (iii) by one (1) day's written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part, (iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand or in possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]

§ 260.98 Premises.

The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(a) Strong offensive odors;

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a source of contamination in areas where food is exposed;

(d) Inadequately drained areas that may contribute contamination to food products through seepage or footborne filth and by providing a breeding place for insects or micro-organisms;

If the grounds of an official establishment are bordered by grounds not under the official establishment operator's control of the kind described in paragraphs (b) through (d) of this section, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

[36 FR 21040, Nov. 3, 1971]

§ 260.99 Buildings and structures.

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:

(a) *Lighting.* There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted, and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient nonglaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(b) *Ventilation.* There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.

(c) *Drains and gutters.* All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.

(d) *Water supply.* There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.

(e) *Construction.* Roofs shall be weathertight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(f) *Processing rooms.* Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.

(g) *Prevention of animal and insects in official establishment(s).* Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breading, and fishery products) are handled and stored. Screens, or other devices, adequate to prevent the passage of insects shall, where practical, be provided for all outside doors and openings. The use of chemical compounds such as cleaning agents, insecticides, bactericides, or rodent poisons shall not be permitted except under such precautions and restrictions as will prevent any possibility of their contamination of the processed product. The use of such compounds shall be limited to those circumstances and conditions as approved by NMFS.

(h) *Inspector's office.* Furnished suitable and adequate office space, including, but not being limited to, light, heat, and janitor service shall be provided rent free in official establishments for use for official purposes by the inspector and NMFS representatives. The room or rooms designated for this purpose shall meet with the approval of NMFS and shall be conveniently located, properly ventilated, and provided with lockers or cabinets suitable for the protection and storage of inspection equipment and supplies and with facilities suitable for inspectors to change clothing.

(i) Adequate parking space, conveniently located, for private or official vehicles used in connection with providing inspection services shall be provided.

[36 FR 21040, Nov. 3, 1971]

§ 260.100 Facilities.

Each official establishment shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(a) Containers approved for use as containers for processed products shall not be used for any other purpose.

(b) No product or material not intended for human food or which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any fishery product is manufactured, processed, handled, or stored.

(c) Suitable facilities for cleaning and sanitizing equipment (e.g., brooms, brushes, mops, clean cloths, hose, nozzles, soaps, detergent, sprayers) shall be provided at convenient locations throughout the plant.

[36 FR 21040, Nov. 3, 1971]

§ 260.101 Lavatory accommodations.

Modern lavatory accommodations, and properly located facilities for cleaning and sanitizing utensils and hands, shall be provided.

(a) Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water (135° F. or more) and cold water, soap, and single service towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places as may be essential to the cleanliness of all personnel handling products.

(b) Sufficient containers with covers shall be provided for used towels and other wastes.

(c) An adequate number of hand washing facilities serving areas where edible products are prepared shall be operated by other than hand-operated controls, or shall be of a continuous flow type which provides an adequate flow of water for washing hands.

(d) Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash hands before returning to work.

(e) Toilet facilities shall be provided according to the following formula:

Number of persons	Toilet bowls required
1 to 15, inclusive	1
16 to 35, inclusive	2
36 to 55, inclusive	[1] 3
56 to 80, inclusive	[1] 4
For each additional 30 persons in excess of 80	[1] 1

[1] Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls required.

All toilet equipment shall be kept operative, in good repair, and in a sanitary condition.

[36 FR 21041, Nov. 3, 1971]

§ 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to processed products, in an efficient, clean, and sanitary manner, and

(b) Permit easy access to all parts to insure thorough cleaning and effective bactericidal treatment. Insofar as is practicable, all such equipment shall be made of smooth impermeable corrosion-resistant material that will not adversely affect the processed product by chemical action or physical contact. Such equipment shall be kept in good repair and sanitary condition. Such equipment shall be cleaned and sanitized at a frequency as is necessary or required in accordance with Good Manufacturing Practice Regulations, 21 CFR Part 128.

[36 FR 21041, Nov. 3, 1971]

§ 260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.

(a) All operators in the receiving transporting, holdings, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other microorganisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in § 260.96 to § 260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless rewashed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the "RETAINED" identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and

conspicuous manner with the word "RETAINED." Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the "RETAINED" identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

§ 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) *Disease control.* No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

(1) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygenic practices while on duty, to the extent necessary to prevent contamination of food products.

(2) Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(3) Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

(4) If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

(5) Wear hair nets, caps, masks, or other effective hair restraints. Other persons that may incidentally enter the processing areas shall comply with this requirement.

(6) Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(7) Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]

LABELING REQUIREMENTS

§§ 260.200—260.291 [Reserved]

PART 261—UNITED STATES STANDARDS FOR GRADES OF WHOLE OR DRESSED FISH

Subpart A—United States Standards for Grades of Whole or Dressed Fish

Sec.
261.101 Scope and product description.
261.102 Product forms.
261.103 Grades—quality factors.
261.104 Determination of grade.
261.105 Hygiene.

Subpart B—United States Standards for Grades of Frozen Headless Dressed Whiting

261.151 Description of the product.
261.152 Grades of frozen headless dressed whiting.
261.161 Determination of the grade.
261.171 Definitions and methods of analysis.
261.175 Tolerances for certification of officially drawn samples.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52750, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Whole or Dressed Fish

§ 261.101 Scope and product description.

This standard shall apply to whole or dressed fish, whether fresh or frozen, of any species suitable for use as human food and processed and maintained in accordance with good manufacturing practices.

§ 261.102 Product forms.

(a) *Types.* (1) Fresh.

(2) Frozen solid packs; glazed or unglazed.

(3) Frozen individually; glazed or unglazed.

(b) *Styles.* (1) Whole.

(2) Dressed-eviscerated.

(3) Head-on or headless.

(4) With or without fins.

(5) Skin-on scaled or unscaled; semi-skinned (epidermis removed) or skinless.

(6) Other (as specified).

§ 261.103 Grades—quality factors.

(a) *U.S. Grade A.* Whole or dressed fish shall:

(1) Possess good flavor and odor and;

(2) Comply with the limits for defects for U.S. Grade A quality in accordance with § 261.104.

(b) *U.S. Grade B.* Whole or dressed fish shall:

(1) Possess reasonably good flavor and odor and;

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 261.104.

(c) *Substandard.* Whole or dressed fish does not possess reasonably good flavor and odor and/or exceeds the limits for defects for U.S. Grade B quality in accordance with § 261.104.

§ 261.104 Determination of grade.

(a) *Procedures for grade determination.* The grade shall be determined by sampling in accordance with the sampling plan described in paragraph (b) of this section evaluating odor and flavor in accordance with paragraph (c) of this section examining for defects in accordance with paragraphs (d), (e) and (f) of this section and using the results to assign a grade as described in paragraph (g) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections, other than for military procurement, shall be in accordance with the sampling plans contained in Part 260 of this chapter except that the sampling unit is ten (10) fish for fish weighing up to 10 pounds. Fish weighing over ten (10) up to fifty (50) pounds—the sample unit shall be five (5) fish. For fish weighing over fifty (50) pounds, the sample unit shall be a minimum of three (3).

(c) *Evaluation of flavor and odor.* (1) Evaluation of the odor on each of the raw fish in the sample unit shall be carried out as follows:

(i) For the examination of small units, break the flesh or thawed sample either with the thumbs or by cutting with a knife in several places. Hold the cut or broken flesh close to the nose for evaluation.

(ii) For the examination of large units, a core may be used. Drill a hole into the hard frozen fish with a high-speed quarter inch drill. As soon as the drill is withdrawn, the hole and drillings are smelled.

(2) If the results of the raw odor evaluation indicate the existence of any off-odors, the sample shall be cooked by any of the methods set forth below to verify the flavor and odor.

(i) *Boil in bag method.* Insert the sample into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the product reaches 160 degrees F.).

(ii) *Steam method.* Wrap the sample in a single layer of aluminum foil, and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product for 20 minutes.

(iii) *Bake method.* Package the product as previously described. Place the packaged product on a flat cookie

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sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400 degrees F. for 20 minutes.

(3) The amount of material to be cooked shall be based on the results of the raw odor evaluation. A minimum of 25 percent of the sample except that not less than 3 sample units shall be used.

(d) *Examination for physical defects.* Each of the fish in the sample will be examined for defects using the list of defect definitions, and the defects noted and categorized as minor, major, and serious in accordance with Table 1.

(e) *Definitions of defects in whole or dressed fish.* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the fish is adversely affected. It includes, but is not limited to, the following examples:

(i) Jellied—refers to the abnormal condition wherein a fish is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish is partly or wholly characterized by a dry, chalky, granular appearance, and fiberous structure.

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) "Appearance defects" shall refer to the overall general appearance of the fish (consistency of the flesh, odor, eyes, gills, and skin) and presence of excessive blood or drip and appearance of the package.

(i) Slight—refers to an appearance defect that is slightly noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(ii) Moderate—refers to an appearance, defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(iii) Excessive—refers to an appearance defect that is conspicuously noticeable and that does seriously affect the appearance, desirability, and/or eating quality of the fish.

(3) "Discoloration" refers to any color not characteristic of the species used.

(i) Slight—refers to the area affected by discoloration of significant intensity involving up to 10 percent of the total area.

(ii) Moderate—refers to the area affected by discoloration of significant intensity involving over 10 percent and up to 50 percent of the total area.

(iii) Excessive—refers to the area affected by discoloration of significant intensity involving over 50 percent of the total area.

(4) "Dehydration" refers to loss of moisture from fish surfaces during frozen storage. For skin-on fish, dehydration shall be evaluated by degree of dullness and shrinkage.

(i) Slight dehydration—is surface color masking affecting more than 3 percent of the area which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 3 percent of the area, and requiring a knife or other sharp instrument to remove.

(5) "Surface defects" shall refer to the following where applicable:

(i) Scales. An occurrence of attached or loose scales in any sample unit (where applicable).

(ii) Blood spot. An accumulation of coagulated opaque, masses of blood on a fish.

(iii) Fins or pieces of fin. An occurrence or absence of attached or loose fins or pieces of fin in any sample unit (where applicable). Dorsal spine shall be removed (where applicable).

(iv) Skin. The presence of the dark or light inner layers of skin for skinless. For semiskinned, reference is to the presence of the dark outside layers.

(v) Bruises. An accumulation of damaged portions of fish muscle, red and opaque in appearance (on a fish).

(vi) Damage to protective coating refers to voids in ice glaze or tears in covering membrane, also to breaks or splits in the skin which are readily discernible and not normally part of the processing.

(6) "Cutting and trimming defects" refers to the following:

(i) Body cavity cuts—refers to misplaced cuts made during evisceration.

(ii) Improper heading (as specified)—refers to the presence of pieces of gills, gill cover, pectoral fins (spine), or collarbone after the fish have been headed. No ragged cuts should be evident after heading.

(iii) Evisceration defects—refers to inadequate cleaning of the belly cavity of the fish. All viscera, kidney (where applicable), spawn, and blood should be removed.

(A) Slight degree of improper evisceration and improper heading refers to a condition that is scarcely noticeable but does not affect the appearance, desirability, and/or eating quality of the fish.

(B) Moderate degree of improper evisceration and improper heading refers to a condition that is conspicuously noticeable but does not seriously affect the appearance, desirability, and/or eating quality of the fish.

(C) Excessive degree of improper evisceration refers to a condition that is conspicuously noticeable and that seriously affect the appearance, desirability, and/or eating quality of the fish.

(iv) Improper washing—inadequate removal of slime, blood, and bits of viscera from the surface of the fish and from the body cavity.

(v) Belly burn—an enzymatic action on the flesh causing a burned or discolored appearance.

(7) "Texture defects" texture of the cooked fish; not characteristic of the species.

(i) Slight—fairly firm, only slightly tough or rubbery, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.*

TABLE I

Physical defects		Categories		
Types	Degree	Minor	Major	Serious
Abnormal condition	Moderate		201	
	Excessive			301
Appearance defects	Slight	102		
	Moderate		202	
	Excessive			302
Discoloration	Slight	103		
	Moderate		203	
	Excessive			303
Dehydration	Slight—more than 3 percent area affected and easily removed	104		
	Moderate—less than 3 percent area affected but difficult to remove		204	
	Excessive—greater than 3 percent area affected			304
Surface defects	Slight—3 to 10 percent area affected	105		
	Moderate—greater than 10 percent area affected		205	
Cutting and trimming defects	Body cavity cuts	106		
	Improper heading:			
	Slight	107		
	Moderate		206	
	Evisceration defects:			

TABLE I—Continued

Physical defects		Categories		
Types	Degree	Minor	Major	Serious
	Slight	108		
	Moderate		207	
	Excessive			305
	Improper washing	109		
	Belly burn		208	
Texture defects	Slight	110		
	Moderate		209	
	Excessive			306

NOTE: The code numbers shown in the above table are for identification of defects for recording purposes only and are keyed to the nature and severity of the defect. They are not scores.

(g) *Grade assignment.* (1) Each fish in a sample unit will be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

Flavor and odor		Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	
Grade B	Reasonably good.	5	1	

(2) Upon determination of grade of each fish in each sample unit, the sample will be designated a grade as follows:

(i) *Grade A.*

Number of subsample units (fish)	Min. No. grade A fish	Max. No. grade B fish	Max. No. substandard
10 (up to 10 lb)	8	2	0
5 (10 to 50 lb)	4	1	0
3 (over 50 lb)	3	0	0

(ii) *Grade B.*

Number of subsample units (fish)	Minimum number of grade B fish	Maximum number of substandard
10 (up to 10 lb)	8	2
5 (10 to 50 lb)	4	1
3 (over 50 lb)	3	0

(iii) *Substandard.* Any fish not meeting the minimum requirements for Grade B quality.

(3) Upon determination of the grade for each sample unit a lot of whole or dressed fish shall be assigned that grade in which:

(i) For physical defects, the number of sample units in the next lower grade does not exceed the acceptance number for deviants prescribed in § 260.61 of the sampling plan, Table II, of Title 50; and

(ii) Not more than 5 percent of the fish in the sample (total fish examined per lot) are in the next lower grade for odor and/or flavor.

NOTE: Sampling for inspection for military procurement shall be in accordance with MIL-STD-105. Lot size shall be expressed in terms of pounds. The sample size shall be in accordance with Inspection Level S-3. Acceptable Quality Levels shall be expressed in terms of defects per hundred units. The AQL's shall be 6.5 for minor and 4.0 for major.

§ 261.105 Hygiene.

Whole or dressed fish shall be processed and maintained in accordance with the applicable requirements of the regulations contained in §§ 260.96 to 260.103 of this chapter and of the good manufacturing practice regulations contained in 21 CFR Part 128.

Subpart B—United States Standards for Grades of Frozen Headless Dressed Whiting

§ 261.151 Description of the product.

The product described in this part consists of clean, wholesome whiting (silver hake) *merluccius bilineraris, merluccius albidus;* completely and cleanly headed and adequately eviscerated. The fish are packaged and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 261.152 Grades of frozen headless dressed whiting.

(a) "U.S. Grade A" is the quality of frozen headless dressed whiting that (1) possess a good flavor and odor and that (2) for those factors that are rated in accordance with scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen headless dressed whiting that (1) possess at least reasonably good flavor and odor and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen headless dressed whiting that meet the requirements of § 261.151 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 261.161 Determination of the grade.

In a plant under USDC Contract Inspection the grade is determined by examining the product for factors 1 to 10 in the thawed state and factor 11 in the cooked state. For lot inspection, examination of the product for factors 1, 2 and 3 is carried out in the frozen state and 4 to 10 in the thawed state. Factor 11 is examined in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100 the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 261.171.

(1) Good flavor and odor (essential requirements for a U.S. Grade A product) means that the cooked product has the typical flavor and odor of the species and is free from rancidity, bitterness staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S. Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
	FROZEN STATE (LOT INSPECTION ONLY)	
1 Arrangement of product [1]	Small degree: 10 percent of fish twisted or bellies and backs not facing the same direction.	2
	Large degree: More than 10 percent of fish twisted, void present or some fish cross packed.	5
2 Condition of packaging (overall assessment).	Poor: Packaging material has been soaked, softened or deteriorated	2
3 Dehydration	Small degree: Slight dehydration of the exposed surfaces	2
	Large degree: Deep dehydration of the exposed surfaces	5
	THAWED STATE	
4 Minimum size: Fish 2 oz. or over are of acceptable size.	Number of fish less than 2 oz. per lb:	
	Over 0—not over 0.5	5
	Over 0.5—not over 1.0	10
	Over 1.0—not over 2.0	20
	Over 2.0	30

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE—Continued

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
5 Uniformity. Weight ratio of fish remaining. The 10 percent largest fish divided by the 10 percent smallest fish.	Weight ratio 10 percent smallest and 10 percent largest:	
	Over 2.0—not over 2.4	2
	Over 2.4—not over 2.8	5
	Over 2.8—not over 3.2	10
	Over 3.2—not over 3.6	20
	Over 3.6	30
6 Heading [1]	Small degree: 10 percent of fish carelessly cut	5
	Moderate degree: Over 10 percent of fish carelessly cut	15
7 Evisceration (overall assessment)	Small degree: Slight evidence of viscera	10
	Moderate degree: Moderate amounts of spawn, viscera, etc	10
	Large degree: Large amounts of viscera, spawn, etc	30
8 Scaling [1]	Small degree: 10 percent of fish not well scaled	2
	Large degree: Over 10 percent of fish not well scaled	5
9 Color of the exposed surfaces (overall assessment).	Small degree: Minor darkening, dulling	2
	Large degree: Objectionably dark, brown, dull	5
10 Bruises and split or broken skin	Presence of bruises and/or broken or split skin per pound:	
	Over 0—not over 0.5	1
	Over 0.5—not over 1.0	2
	Over 1.0—not over 1.5	4
	Over 1.5—not over 2.0	7
	Over 2.0	10
11 Texture (overall assessment)	Small degree: Moderately dry tough, mushy, rubbery, watery, stringy	5
	Large degree: Excessively dry, tough, mushy, rubbery, watery, stringy	15

[1] 10 percent of fish refers to 10 percent by count rounded to nearest whole fish.

§ 261.171 Definitions and methods of analysis.

(a) *Selection of the sample unit.* The sample unit consists of the primary container and its entire contents. The whiting are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* When this product is examined under USDC Contract Inspection, the samples are examined for factors 1, 2, and 3 in Table 1 in the thawed state. When the product is lot inspected, the samples are examined for factors 1, 2, and 3 in Table 1 in the frozen state.

(1) *"Arrangement of product"* refers to the packing of the product in a symmetrical manner, bellies or backs all facing in the same direction, fish neatly dovetailed.

(2) *"Condition of the packaging material"* refers to the condition of the cardboard or other packaging material of the primary container. If the fish is allowed to stand after packing and prior to freezing moisture from the fish will soak into the packaging material and cause deterioration of that material.

(3) *"Dehydration"* refers to the presence of dehydrated (water-removed) tissue on the exposed surfaces of the whiting. Slight dehydration is surface dehydration which is not color-masking. Deep dehydration is color-masking and cannot be removed by scraping with a fingernail.

(c) *Examination of sample, thawed state.* Thawed state means the state of the product after being thawed. Thawing the sample is best accomplished by enclosing the sample in a film type bag and immersing in an agitated water bath held at 68° F., ±2° F. Allow the product to remain immersed until thawed. Alternatively when the facilities are lacking for water thawing, the sample may be thawed by slacking it out at a temperature between 30° to 40° F. on an aluminum tray from 2 hours for a 1½-pound sample to 8 hours for a 10-pound sample.

(1) *"Minimum size"* refers to the size of the individual fish in the sample. Fish 2 ounces or over are considered acceptable. Smaller fish

cannot be cooked uniformly with acceptable size fish. Separate the fish of unacceptable size, divide their number by the weight of the sample in pounds, and apply to Table 1. Example—four fish of unacceptable size in a 5-pound package is $\frac{4}{5}=0.8$, a 10 point deduction.

(2) *"Uniformity."* From the fish remaining, select by count 10 percent (minimum of one fish) of the largest and 10 percent (minimum of one fish) of the smallest and divide the largest weight by the smallest weight to get a weight ratio.

(3) *"Heading"* refers to the condition of the fish after they have been headed. The fish should be cleanly headed behind the gills and pectoral fins. No gills, gill bones, or pectoral fins should remain after the fish have been headed.

(4) *"Evisceration"* refers to the cleaning of the belly cavities of the fish. All spawn, viscera, and belly strings should be removed.

(5) *"Scaling"* refers to the satisfactory removal of scales from the fish.

(6) *"Color of the cut surfaces"* refers to the color of the cut surfaces of the fish after heading and other processing.

(7) *"Bruises and broken or split skin"* refers to bruises over one-half square inch in area and spilts or breaks in the skin more than one-half inch in length which are not part of the processing.

(d) *Examination of sample, cooked state.* Cooked state means the state of the sample after being cooked. Cooking the sample is best accomplished by inserting the sample into a film type bag and submerging it into boiling water for from 18–20 minutes. A minimum of three fish per sample unit shall be cooked.

(1) *"Texture defects"* refers to the absence of normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects are dryness, softness, toughness, and rubberyness.

(e) *General definitions.* (1) *Small* (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) *Moderate* (overall assessment) refers to a condition that is distinctly noticeable but is not seriously objectionable.

(3) *Large* (overall assessment) refers to a condition which is both distinctly noticeable and seriously objectionable.

§ 261.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter, (Regulations Governing Processed Fishery Products).

PART 262—UNITED STATES STANDARDS FOR GRADES OF FISH STEAKS

Subpart A—[Reserved]

Subpart B—United States Standards for Grades of Frozen Halibut Steaks

Sec.
262.151 Product description.
262.152 Styles of frozen halibut steaks.
262.153 Grades of frozen halibut steaks.
262.156 Recommended dimensions.
262.161 Ascertaining the grade.
262.171 Definitions and methods of analysis.
262.175 Tolerances for certification of officially drawn samples.

SCORE SHEET

262.181 Score sheet for frozen halibut steaks.

Subpart C—United States Standards for Grades of Frozen Salmon Steaks

262.201 Product description.
262.202 Styles.
262.203 Grades.
262.206 Recommended dimensions.
262.211 Ascertaining the grade.
262.221 Definitions.
262.225 Tolerances for certification of officially drawn samples.
262.231 Score sheet for frozen salmon steaks.

AUTHORITY: 7 U.S.C. 1621–1630.

SOURCE: 42 FR 52753, Sept. 30, 1977, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—United States Standards for Grades of Frozen Halibut Steaks

§ 262.151 Product description.

Frozen halibut steaks are clean, wholesome units of frozen raw fish flesh with normally associated skin and bone and are 2 ounces of more in weight. Each steak has two parallel surfaces and is derived from whole or subdivided halibut slices of uniform thickness which result from sawing or cutting perpendicularly to the axial length, or backbone, of a whole halibut. The steaks are prepared from either frozen or unfrozen halibut (Hippoglossus spp.) and are processed and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 262.152 Styles of frozen halibut steaks.

(a) *Style I, random weight pack.* The individual steaks are of random weight and neither the weight nor the range of weights are specified.

(b) *Style II, uniform weight or portion pack.* All steaks in the package or in the lot are of a specified weight or range of weights.

§ 262.153 Grades of frozen halibut steaks.

(a) "U.S. Grade A" is the quality of frozen halibut steaks which possess good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen halibut steaks which possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen halibut steaks which fail to meet the requirements of the "U.S. Grade B."

§ 262.156 Recommended dimensions.

(a) The recommended dimensions of frozen halibut steaks are not incorporated in the grades of the finished product since dimensions, as such, are not factors of quality for the purpose of these grades. However, the degree of uniformity of thickness among units of the finished product is rated since it is a factor affecting the quality and utility of the product.

(b) It is recommended that the thickness (smallest dimension) of individually frozen halibut steaks be not less than ½ inch and not greater than 1¼ inches.

§ 262.161 Ascertaining the grade.

The grade is ascertained by observing the product in the frozen, thawed, and cooked states and is evaluated by consideration of the following:

(a) *Factors rated by score points.*The quality of the product with respect to scored factors is expressed numerically. Cumulative point deductions are assessed for variations of quality for each factor in accordance with the schedule in Table I, in the frozen, thawed, and cooked states. The total deduction is subtracted from the maximum possible score of 100 to obtain the product score.

(b) *Factors not rated by score points.*The factors of flavor and odor are evaluated organoleptically in the cooked state for both the light and dark meat (surface fat) and are defined as follows:

(1) *Good flavor and odor.* "Good flavor and odor" (essential requirement for Grade A) means that the fish flesh has the good flavor and odor characteristics of halibut, and is free from rancidity and from off-flavors and off-odors.

(2) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for Grade B) means that the fish flesh may be somewhat lacking in the good flavor and odor characteristic of halibut, is reasonably free of rancidity, and is free from objectionable off-flavors and off-odors.

(3) *Substandard flavor and odor.* "Substandard flavor and odor" (Substandard grade) means that the flavor and odor fail to meet the requirements of "reasonably good flavor and odor."

(c) *Determination of final product grade.* The final product grade is derived on the basis of both the product score as determined by the "factors rated by score points" and the grade requirements of flavor and odor as defined under "factors not rated by score points." The lower of the two determines the final grade.

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]

Factor	Description of quality variation	Deduct
	FROZEN	
	Per steak	
1 Dehydration [2]	Surface area affected:	
	Less than 1 square inch but obvious	1
	1 to 2 square inches	2
	Above 2 square inches	3
2 Percentage glaze	Over 0.0, not over 6.0 percent by weight of sample unit	0
	Over 6.0, not over 7.0	1
	Over 7.0, not over 8.0	2
	Over 8.0, not over 9.0	3
	Over 9.0	4
3 Uniformity of thickness	For each 1/16 inch above 1/8 inch variation in steak thickness (maximum total deduction permitted 6 points per sample unit).	2
4 Uniformity of weight and minimum weight	Style I—Random weight.—Use either (a) or (b), whichever gives a greater deduction.	
	(a) For each steak less than 3.0 ounces in weight per sample package.	4
	(b) For each 0.1 ounce below 4.0 ounces in average steak weight per sample.	½
	Style II—Uniform weight or portions.—For each full 1 percent of the steaks deviating by more than 0.6 ounce from the specified portion weight or the average of the specified portion range (per sample package).	2
	THAWED	
5 Workmanship—Defects of: Cutting, collar bone, loose skin, fins, blood spots, bruises, foreign material, backbone, cartilage, sawdust.	Slight or moderate	1
	Excessive	2
	(For each defect, per occurrence, per sample package or per 2 pounds for packages over 2 pounds net weight).	
	(Per sample unit)	
6 Color defects:		
(a) Discoloration of drip liquor	Slight	1
	Moderate	2
	Excessive	3
	(Per steak)	
(b) Discoloration of light meat [2]	Slight	1
	Moderate	2
	Excessive	3
	(Per steak)	
(c) Discoloration of dark meat [2]	Slight	1
	Moderate	2
	Excessive	3
	(Per sample unit)	
(d) Non-uniformity of color	Slight	1
	Moderate	2
	Excessive	3
	(Per steak)	
7 Honeycombing [2]	Surface area affected:	
	26 to 50 percent	½
	51 to 75 percent	1
	76 to 100 percent	2

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TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]—Continued

Factor	Description of quality variation	Deduct
	COOKED	
	(Per steak)	
8 Texture defect [2] (tough, dry, fibrous, or watery)	Slight	1
	Moderate	2
	Excessive	3

[1] This schedule of point deductions is based on the examination of sample units composed of: (a) An entire sample package and its contents (for retail sized packages) or (b) a representative subsample consisting of three or more halibut steaks taken from each sample package (for institutional sized packages), except that the entire sample package shall be examined for factor 4.

[2] Point deductions for these factors are based on a 3-steak sample unit. For samples containing other than 3 steaks per sample unit or per package, multiply the results by the correction factor 3/*n* where *n* equals the number of steaks.

§ 262.171 Definitions and methods of analysis.

(a) "Percentage glaze" on halibut steak means the percent by weight of frozen coating adhering to the steak surfaces and includes the frost within the package. It is determined by the method described below or by methods giving equivalent results.

(1) *Equipment needed.* (i) Source of cold tap water with aerated faucet.

(ii) Balance accurate to 0.1 gm.; or 0.01 ounce.

(iii) Paper towels.

(iv) Small knife.

(2) *Procedure.* (i) Weigh package in overwrap and all its contents (A).

(ii) Remove steaks and loose frost; weigh dry packaging (B).

(iii) The difference in weight, A-B represents weight of steaks plus glaze (C).

(iv) Remove glaze from halibut steaks.

(*a*) Adjust tap water to a flow rate of about 3 quarts/min. through an aerated faucet.

(*b*) Direct 50° to 60° F. tap water onto skin side of steak while gently feeling and rubbing cut surfaces with finger tips (if necessary, temperatures up to 80° F. may be used but require closer control).

(*c*) When all glaze is removed from cut flesh surface, as evidenced by absence of slick feel to fingers, remove steak from water.

(*d*) Rapidly remove excess water with single paper towel before it has time to refreeze on the steak, and flick off residual skin glaze by knife or hand.

(*e*) Repeat steps (*b*), (*c*), and (*d*) on each steak in package or sample unit.

(*f*) Weigh deglazed halibut steaks (D, actual net weight of sample).

(Steps (*a*) through (*f*) of this paragraph (a)(2)(ii) are completed within 3 minutes.)

(v) Calculate percentage glaze: Percentage glaze $= C - D / D \times 100$.

(b) "Cooked state" means that the thawed product has been cooked in a suitable manner which is defined as being heated submerged in boiling water, unseasoned, and in a boilable film type pouch for 10 minutes. (Steaks over 1 inch in thickness may require 5 additional minutes for heating.)

(c) "Uniformity of thickness" means that the thickness is substantially the same for one or more steaks within a package or sample unit.

(d) Color defects: (1) "Discoloration of drip liquor" means that the free liquid which drains from the thawed steaks is discolored with blood residue usually from the dorsal aorta of the halibut.

(2) "Discoloration of light meat" means that the normal flesh color of the main part of the halibut steak has darkened due to deteriorative influences.

(3) "Discoloration of the dark meat" means that the normal color of the surface fat shows increasing degrees of yellowing due to oxidation.

(4) "Nonuniformity of color" refers to noticeable differences in color on a single steak or between adjacent steaks in the same package.

(e) "Dehydration" refers to the appearance of a whitish area on the surface of a steak due to the removal of water or drying of the affected area.

(f) "Honeycombing" refers to the visible appearance of numerous discrete holes or openings of varying size on the steak surface.

(g) "Workmanship defects" refers to appearance defects that were not eliminated during processing and are considered either objectionable or poor commercial practice.

(h) "Texture defect" refers to an undesirable increase in toughness and/or dryness, fibrousness, and watery nature of halibut examined in the cooked state.

§ 262.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified on the basis of Part 260 of this chapter.

SCORE SHEET

§ 262.181 Score sheet for frozen halibut steaks.

GENERAL

Label
Size and kind of container
Container mark or identification
Size of lot
Number of samples
Actual net weight (ounces)
Number of steaks per container
Product style

Scored factors (table 1)	Deductions
Frozen:	
1. Dehydration	
2. Percentage glaze	
3. Uniformity of thickness	
4. Uniformity of weight	
Thawed:	
5. Workmanship	
6. Color defects	
7. Honeycombing	
Cooked: 8. Texture	
Total deductions	
Rating for scored factors (100—Total deductions)	

Unscored factors	Rating
Cooked:	
a. Odor	
b. Flavor:	
(light meat)	
(dark meat)	
Flavor and odor rating	
Final grade	

Subpart C—United States Standards for Grades of Frozen Salmon Steaks

§ 262.201 Product description.

Frozen salmon steaks are clean, wholesome units of frozen raw fish flesh with normally associated skin and bone and are 2.5 ounces or more in weight. Each steak has to parallel surfaces and is derived from whole or subdivided salmon slices of uniform thickness which result from sawing or cutting dressed salmon perpendicularly to the axial length, or backbone. The steaks are prepared from either frozen or unfrozen salmon (Oncorhynchus spp.) and are processed and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. The steaks in an individual package are prepared from only one species of salmon.

(a) *Species.* Frozen salmon steaks covered by this standard are prepared from salmon of any of the following species:

Silver or coho (O. kisutch).
Chum or keta (O. keta).
King, chinook, or spring (O. tshawytscha).
Red, sockeye (O. nerka).
Pink (O. gorbuscha).

§ 262.202 Styles.

(a) *Style I—Random weight pack.* The individual steaks are of random weight and neither the individual steak weight nor the range of weights is specified. The steaks in the lot represent the random distribution cut from the head to tail of a whole dressed salmon.

(b) *Style II—Random weight combination pack.* The individual steaks are of random weight and neither the individual steak weight nor range of weights is specified. The steaks in the lot represent a combination of cuts from selected parts of the whole dressed salmon.

(c) *Style III—Uniform weight or portion pack.* All steaks in the package or in the lot are of a specified weight or range of weights.

§ 262.203 Grades.

(a) "U.S. Grade A" is the quality of frozen salmon steaks that possess good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen salmon steaks that possess at least reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlines in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen salmon steaks that fail to meet the requirements of the "U.S. Grade B."

§ 262.206 Recommended dimensions.

(a) The recommended dimensions of frozen salmon steaks are not incorporated in the grades of the finished product since dimensions, as such, are not factors of quality for the purpose of these grades. However, the degree of uniformity of thickness among units of the finished product is rated since it is a factor affecting the quality and utility of the product.

(b) It is recommended that the thickness (smallest dimension) of individually frozen salmon steaks be not less than ½ inch and not greater than 1½ inches.

§ 262.211 Ascertaining the grade.

The grade is ascertained by observing the product in the frozen, thawed, and cooked states and is determined by consideration of the following:

(a) *Factors rated by score points.* The quality of the product with respect to all factors is scored numerically. Cumulative point deductions are assessed for variations of quality for the factors in accordance with the schedule in Table I, in the frozen, thawed, and cooked states. The total deduction is substracted from the maximum possible score of 100 to obtain the "product score."

(b) *Factors governed by "limiting rule".* The factors of flavor and odor, in addition to being rated by score points, are further considered for compliance with the "limiting rule" grade requirements of flavor and order in Table I, as defined under Definitions § 262.221(g)(9).

(c) *Determination of the final product grade.* The final product grade is derived on the basis of both the "product score" and the "limiting rule" grade requirements of flavor and odor, per Table I.

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]

[See footnotes at end of table.]

Scored factors	Description of quality variation	Deduct
FROZEN		
1. General appearance defects	Per occurrence:	
	Slight	1-2
	Moderate	3-4
	Excessive	5-10
2. Dehydration	(Per occurrence) for each 1 sq. inch of surface area	1
3. Uniformity of thickness	For each 1/16 inch above ⅛ inch variation tolerance in steak thickness (max. deduction: 6 points).	2
4. Uniformity of weight and minimum weight	Style I & II—Random weight. For each steak between 2.5 and 3.0 ounces in weight per package or per pound of product for packages over 1 pound net wt.	4
	Style III—Uniform weight or portion. For each 0.1 ounce beyond the 0.1 ounce tolerance of the specified portion weight range per 5 lbs. of product.	1

TABLE I—SCHEDULE OF POINT DEDUCTIONS FOR FACTORS RATED BY SCORE POINTS [1]—Continued

[See footnotes at end of table.]

Scored factors	Description of quality variation	Deduct
THAWED		
5. Workmanship defects: Blood spots, bruises, cleaning, cutting, fins, foreign material, collarbone, girdle, loose skin, pugh marks, sawdust, scales.	Per occurrence:	
	Slight	1
	Moderate	2–5
	Excessive	5–8
6. Color defects:		
(a) Discoloration of fatty portion	Slight	1–5
	Moderate	3–2
	Excessive	6–10
(b) Discoloration of lean portion	Slight	1–2
	Moderate	3–5
	Excessive	6–10
(c) Non-uniformity of color	Slight	1–2
	Moderate	3–4
	Excessive	5–6
7. Honeycombing	Percent sample area affected:	
	26 to 50	1
	51 to 75	2
	75 to 100	3
COOKED		
8. Texture defect (tough, dry, fibrous, or watery)	Slight	1–2
	Moderate	3–5
	Excessive	6–10
9. Odor [2]	Good (A)	0–2
	Reasonably good (B)	3–5
	Substandard (S)	6–15
10. Flavor:		
(a) Lean portion	Good (A)	0–2
	Reasonably good (B)	3–5
	Substandard (S)	6–15
(b) Fatty portion	Good (A)	0–2
	Reasonably good (B)	3–5
	Substandard (S)	6–15

[1] This schedule of point deductions is based on the examination of sample units composed of: (a) An entire sample package and its contents (for retail sized packages) or (b) a representative subsample consisting of about one pound of salmon steaks taken from each sample package (for institutional sized packages), except that the entire sample package or its equivalent shall be examined for factor 4.

[2] "Limiting rule" grade requirements of flavor and odor: Salmon steaks which received over 5 deduction points for odor, or flavor of the lean, or flavor of the fatty portion, shall not be graded above substandard, and those which receive between 3 to 5 points shall not be graded above "U.S. Grade B," regardless of the total product score. (This is a "limiting rule" based on flavor and odor as defined under definitions § 262.221(g)(9)).

§ 262.221 Definitions.

(a) "Slight" refers to a defect that is scarcely noticeable and may not affect the appearance, the desirability, and/or eating quality of the steaks.

(b) "Moderate" refers to a defect that is conspicuously noticeable (not seriously objectionable) and does not seriously affect the appearance, desirability and/or eating quality of the steaks.

(c) "Excessive" refers to a defect that is conspicuously noticeable (seriously objectionable) and seriously affects the appearance, desirability, and/or eating quality of the steaks.

(d) "Occurrence" is defined as each incidence of the same or different types of defects.

(e) "Cooked state" means that the thawed, unseasoned product has been heated within a boilable film-type pouch by immersing the pouch with product in boiling water for 10 minutes. Steaks cooked from the frozen state may require about two additional minutes of cooking.

(f) "Actual net weight" means the weight of the salmon steaks within the package after removal of all packaging material, ice glaze or other protective coatings.

(g) "Scored factors" (Table I):

(1) "General appearance defects" refer to poor arrangement of steaks,

distortion of steaks, wide variation in shape, between steaks greater than normal number of head and/or tail pieces, imbedding of packaging material into fish flesh, inside condition of package, frost deposit, excessive or non-uniform skin glaze, and undesirable level of natural color.

(2) "Dehydration" refers to the appearance of a whitish area on the surface of a steak due to the evaporation of water or drying of the affected area.

(3) "Uniformity of thickness" means that steak thickness is within the allowed ⅛-inch manufacturing tolerance between the thickest and thinnest parts of the steaks within a package or sample unit.

(4) "Uniformity of weight and minimum weight" is defined in Table I. (Portions are designated by "weight range" or "specified weight." The "weight range" of portions bearing "specified weight" designation on containers shall be taken as the "specifed weight" plus or minus 0.5 ounces unless otherwise specified.)

(5) "Workmanship defects" refers to appearance defects that were not eliminated during processing and are considered objectionable or poor commercial practice. They include the following: Blood spots, bruises, cleaning (refers to inadequate cleaning of the visceral cavity from blood, viscera and loose or attached appendages), cutting (refers to irregular, inadequate, unnecessary, or improper cuts and/or trimmings), fins, foreign material (refers to any loose parts, of fish or other than fish origin), collar bone, girdle (refers to bony structure adjacent to fin), loose skin, pugh marks, sawdust and scales.

(6) "Color defects": (i) "Discoloration of fat portion" means that the normal color of the fat shows increasing degrees of yellowing due to oxidation.

(ii) "Discoloration of lean portion" means that the normal surface flesh color has faded or changed due to deteriorative influences.

(iii) "Nonuniformity of color" refers to noticeable differences in surface flesh color on a single steak or between adjacent steaks in the same package or sample unit. It would also include color variation of the visceral cavity and skin watermarking.

(7) "Honeycombing" refers to the visible appearance on the steak surface of numerous discrete holes or openings of varying size.

(8) "Texture defect" refers to an undersirable increase in toughness and/or dryness, fibrousness, and watery nature of salmon examined in the cooked state.

(9) "Odor" and "flavor": (i) "Good flavor and odor" (essential requirement for Grade A) means that the fish flesh has the good flavor and odor characteristic of the indicated species of salmon, and is free from rancidity and from off-flavors and off-odors.

(ii) "Reasonably good flavor and odor" (minimum requirement for Grade B) means that the fish flesh may be somewhat lacking in the good flavor and odor characteristics of the indicated species of salmon, is reasonably free of rancidity, and is free from objectionable off-flavors and off-odors.

(iii) "Substandard flavor and odor" (substandard grade) means that the flavor and odor fail to meet the requirements of "reasonably good flavor and odor."

§ 262.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified on the basis of Part 260 Subpart A of this chapter, (Regulations Governing Processed Fishery Products).

§ 262.231 Score sheet for frozen salmon steaks.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Number of steaks per container ....
Product style ....
Actual net weight........(ounces)........(lb.) ....

Scored factors	Deductions
FROZEN	
1. General appearance defects	....
2. Dehydration	....
3. Uniformity of thickness	....
4. Uniformity of weight	....

Scored factors	Deductions
THAWED	
5. Workmanship defects	
6. Color defects	
7. Honeycombing	
COOKED	
8. Texture	
9. Odor (Limiting rule—Table I)	
10. Flavor (Limiting rule—Table I)	
Total deductions	
Product score (100—Total deductions)	
Flavor and odor rating	
Final grade	

PART 263—UNITED STATES STANDARDS FOR GRADES OF FISH FILLETS

Subpart A—United States General Standards for Grades of Fish Fillets

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SCORE SHEET

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263.331 Score sheet for ocean-perch fillets.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 57256, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States General Standards for Grades of Fish Fillets

SOURCE: 44 FR 32386, June 6, 1979, unless otherwise noted.

§ 263.101 Scope and product description.

(a) This standard shall apply to fresh or frozen fillets of fish of any species that are suitable for use as human food and processed and maintained in accordance with good manufacturing procedures. It does not apply to products covered by Subparts B, C, D, and E of Part 263.

(b) Fillets are slices of practically boneless fish flesh of irregular size and shape, which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

§ 263.102 Product forms.

(a) *Types:* (1) Fresh.

(2) Frozen individually (IQF); glazed or unglazed.

(3) Frozen solid packs; glazed or unglazed.

(b) *Styles:* (1) Single.

(i) Skin-on.

(ii) Skin-on scaled.

(iii) Skin-on (white side only) (applies only to flatfish).

(iv) Skin-off (skinless).

(2) Butterfly.

§ 263.103 Grades.

(a) *U.S. Grade A.* Fish fillets shall:

(1) Possess good flavor and odor characteristic of the species; and

(2) Comply with the limits for defects for U.S. Grade A quality as outlined in § 263.104.

(b) *U.S. Grade B.* Fish fillets shall:

(1) Possess reasonably good flavor and odor characteristic of the species; and

(2) Comply with the limits for defects for U.S. Grade B quality in accordance with § 263.104.

(c) *U.S. Grade C.* Fish fillets shall:

(1) Possess minimal acceptable flavor and odor characteristic of the species with no objectionable off-flavors or off-odors; and

(2) Comply with the limits for defects for U.S. Grade C quality in accordance with § 263.104.

(d) *"Substandard".* Fish fillets shall:

(1) Possess minimal acceptable flavor and odor characteristics of the species with no objectionable off-flavors or off-odors; and

(2) Fail to meet the limits for physical defects for U.S. Grade C quality given under § 263.104, paragraphs (d), (e), and (f).

§ 263.104 Grade determination.

(a) *Procedures for grade determination:* The grade shall be determined by evaluating the product in the frozen, and/or thawed, and cooked states. Each defect is classified as to its relative severity as minor, major, or serious in accordance with paragraphs (d), (e), and (f) of this section. Odor and flavor are evaluated in accordance with paragraph (c) of this section. Tolerances for the various defects are set for each grade classification according to group species.

(b) *Sampling.* Sampling is to be done in accordance with the Regulations Governing Processed Fishery Products, Title 50, Chapter II, Subchapter G, Part 260.61, Tables II, V, or VI, where applicable. The sample unit shall be the container and its entire contents for containers up to 10 pounds. A representative 3 pound sample unit for containers over 10 pounds shall be used.

(c) *Evaluation of flavor and odor.* (1) Evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For evaluation of the odor of raw fillets, the thawed fillets should be broken and the broken flesh held close to the nose immediately to detect off-odor.

(2) If raw odor evaluation indicates any noncharacteristic and/or off-odors, the sample unit or parts thereof shall be cooked by any of the following methods for verification of results of raw odor evaluation:

(i) *Baked method.* Package the product in aluminum foil. Place the packaged product on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F until the internal temperature of the product reaches 160° F.

(ii) *Boil in bag method.* Insert the thawed unseasoned sample into a boilable film-type pouch. Fold open end of the pouch over a suspension bar. Clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents until the internal temperature of the product reaches 160°F.

(iii) *Steam method.* Wrap the sample in a single layer of aluminum foil and place on a wire rack suspended over boiling water in a covered container. Steam the packaged product until the internal temperature of the product reaches 160°F.

(d) *Examination for physical defects:* Each sample unit shall be examined for defects using the list of defect definitions that follow. Defects will be categorized as minor, major, and serious according to Table 1 of this standard.

(e) *Definition of defects in fillets:* (1) "Abnormal condition" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently changed so that the usability and/or desirability of the flesh is adversely affected. It includes but is not limited to the following:

(i) Jellied—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a gelatinous, glossy, translucent appearance.

(ii) Milky—refers to the abnormal condition wherein a fish fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(iii) Chalky—refers to an abnormal condition wherein a fish fillet is partly or wholly characterized by a dry, chalky, granular appearance, and fiberless structure.

The intensity of abnormal conditions is defined as follows:

(A) Moderate—refers to a condition that is distinctly noticeable but does not seriously affect the appearance, desirability, and/or the eating quality of the product.

(B) Excessive—refers to a condition which is both distinctly noticeable and seriously objectionable.

(2) Appearance defect—refers to the color of the fish flesh and to the degree of surface dehydration of the product.

(i) Color defect—refers to any readily discernable abnormal coloration including bruises, blood spots, browning, yellowing, and melanin spotting. Each square inch (6.5 cm^2) of affected area is counted as one instance as determined by a transparent grid of 1 inch squares.

The extent of appearance defects is defined as follows:

(A) Slight—2-4 instances.

(B) Moderate—5-6 instances.

(C) Excessive—over 6 instances.

(ii) Dehydration—refers to loss of moisture from fish fillet surfaces during frozen storage.

(A) Slight dehydration—is surface color masking affecting more than 5 percent of surface area which can be readily removed by scraping with a blunt instrument.

(B) Moderate dehydration—is deep color masking penetrating the flesh affecting less than 5 percent, but more than 1 percent of surface area and requiring a knife or other sharp instrument to remove.

(C) Excessive dehydration—is deep color masking penetrating the flesh affecting more than 5 percent of surface area and requiring a knife or other sharp instrument to remove.

(3) Workmanship defects refer to:

(i) Cutting and trimming imperfections, ragged edges, holes, tears, and improper or misplaced cuts. Each square inch (6.5 cm^2) of affected area is counted as one instance whether it is full or fractional. "Ragged edges" refers to the irregular or shredded appearance of the fillet edge.

(ii) Scales, fins, or pieces of fins or extraneous material.

(A) Scales (skin-off) scaled fillets—An occurrence of attached or loose scales in any sample unit up to 1 square inch (6.5 cm^2) is counted as one instance. Each additional 1 square inch (6.5 cm^2) is an additional instance.

(B) Fins—Any fin or parts of any fin up to 1 square inch (6.5 cm^2) in area shall be considered one instance of fin.

(C) Extraneous material means any piece of foreign matter on the fillet or elsewhere in the package. Each occurrence is considered one instance.

The extent of workmanship defects is defined as follows:

Slight degree—1-2 instances.

Moderate degree—3-4 instances.

Excessive degree—over 4 instances.

(4) Bone—refers to a bone, or piece of bone, that exceeds either the di-

mension 15 mm in length or 0.355 mm in diameter. Each area of one inch square (6.5 cm^2) which contains a bone or a cluster of bones shall be regarded as one instance of bones. The amount of bones is defined as follows:

Slight—1 instance.
Moderate—2-4 instances.
Excessive—over 4 instances.

(5) Skin—includes exterior skin and black membrane (belly lining).

(i) For skinless fillets, each piece of skin up to 1 square inch (6.5 cm^2) and every additional complete 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

(ii) In the case of skin-on or skinless fillets, each piece of black membrane (belly lining) up to 1 square inch (6.5 cm^2) thereafter shall be considered an instance.

The amount of skin is defined as follows:

Slight degree—1 instance.
Moderate degree—2-4 instances.
Excessive degree—over 4 instances.

(6) Size of fillets—refers to the freedom from undesirably small pieces of fillets. Undesirably small shall mean any piece of fillet weighing less than 1 ounce (30 grams) per container. Moderate degree—2 pieces. Excessive—over 2 pieces.

(7) "Texture defects"—refers to the texture of the cooked fish being not characteristic of the species.

(i) Slight—fairly firm, does not form a fibrous mass in the mouth, moist but not mushy.

(ii) Moderate—moderately tough or rubbery, has noticeable tendency to form a fibrous mass in the mouth, moist but not mushy.

(iii) Excessive—excessively tough or rubbery, has marked tendency to form a fibrous mass in the mouth, or is very dry or very mushy.

(f) *Categorization of physical defects.* Instances shall be assessed on a per pound basis for physical defects, except for defects relating to abnormal conditions, texture, dehydration and sizes of fillets.

TABLE 1—DEFECT TABLE

Defect description	Classification		
	Minor	Major	Serious
1. Abnormal Condition:			
Moderate		2	
Excessive			4
2. Appearance:			
(a) Color defects:			
Slight (2–4 instances)	1		
Moderate (5–6 instances)		2	
Excessive (over 6 instances)			4
(b) Dehydration:			
Slight (surface <5% of area)	1		
Moderate (deep 1 to 5% of area)		2	
Excessive (deep >5% of area)			4
3. Workmanship defects:			
(a) Cutting and trimming:			
Slight (1–2 instances)	1		
Moderate (2–4 instances)		2	
Excessive (over 4 instances)			2
(b) Scales, fins, extraneous material:			
Slight (1–2 instances)	1		
Moderate (3–4 instances)		2	
Excessive (over 4 instances)			2
4. Bones:			
Slight (1 instance)	1		
Moderate (2–4 instances)		2	
Excessive (over 4 instances)			4
5. Skin and Membrane:			
Slight (1 instance)	1		
Moderate (2–4 instances)		2	
Excessive (over 4 instances)			2
6. Size of Fillets:			
Moderate (2 instances)		2	
Excessive (over 4 instances)			2

TABLE 1—DEFECT TABLE—Continued

Defect description	Classification		
	Minor	Major	Serious
7. Texture:			
Slight	1		
Moderate		2	
Excessive			4

TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major defects	Serious defects	Group species[1]
U.S. Grade A:		
Up to 4 points	None	Groundfish.
Up to 5 points	do	Flatfish.
Up to 6 points	do	All others.
U.S. Grade B:		
Up to 8 points	do	Groundfish.
Up to 10 points	do	Flatfish.
Up to 12 points	do	All others.
U.S. Grade C:		
Up to 10 points	Up to 8 points	Groundfish.
Up to 12 points	do	Flatfish.
Up to 14 points	do	All others.

[1] Groundfish (white fish) includes cusk, ocean catfish, pollock, hake, whiting, and ling. Flatfish includes Greenland turbot and halibut.

(g) *Grade assignment:* Each sample unit will be assigned the grade into which it falls in accordance with the tolerance contained in Table 1 for Group Species. The grade to be assigned a lot is the grade indicated by the average of the total scores, provided the number of sample units in the next lower grade for both physical defects and flavor and odor does not exceed the acceptance number as indicated in the sampling plans contained in § 260.61.

Subpart B—United States Standards for Grades of Cod Fillets

§ 263.151 Product description.

The product described in this part consists of clean, whole, wholesome fillets or primarily large pieces of clean, whole, wholesome fillets, cut away from either side of cod, Gadus morhua or gadus macrocephalus; the fillets may be either skinless or with skin on. They are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. (This part does not provide for the grading of pieces of fish flesh cut away from previously frozen fish blocks, slabs, or similar products.

§ 263.152 Grades of cod fillets.

(a) "U.S. Grade A" is the quality of cod fillets that possess good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of cod fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of cod fillets that fail to meet the requirements of U.S. Grade B.

§ 263.154 Product forms.

(a) Types:

(1) Fresh.

(2) Frozen, solid pack; glazed and unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on.

(2) Skinless.

§ 263.156 Recommended weights and dimensions.

(a) The recommendations as to net weights and dimensions of packaged cod fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weights of the packaged frozen cod fillets be not less than 12 ounces and not over 10 pounds.

§ 263.161 Ascertaining the grade.

The grade of cod fillets is ascertained by examining the product in the fresh or frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, absence of defects, and character. These factors are rated in the following manner:

(a) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 263.162).

(b) *Appearance, size, absence of defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	25
Size	20
Absence of defects	40
Character	15
Total possible score	100

§ 263.162 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of cod (Gadus morhua or Gadus macrocephalus) and is free from staleness, and off-flavor and off-odors fo any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement of a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.163 Evaluation and rating of the scored factors; appearance, size, absence of defects, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 263.164 Appearance.

(a) The factor of appearance refers to the normal color of the species of fresh or frozen fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Tables I and II apply Frozen cod fillets which receive 25 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR DISCOLORATION

Color of product	Deduction points	
	"Light colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
No discoloration	0	0
Slight yellowing	2	1
Moderate yellowing	4	2
Excessive yellowing and/or any rusting	13	12

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION

Degree of dehydration of frozen product	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking	0	1	0
	1	50	2
	50	100	5
Moderate—Deep but just deep enough to easily scrape off with fingernail.	1	25	5
	25	50	8
	50	100	16
Excessive—Deep dehydration not easily scraped off.	1	25	12
	25	100	25

§ 263.165 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillet pieces. Any fillet piece weighing less than 2 ounces is classed as being undersirably small.

(b) For the purpose of rating the factor of size the schedule of deduction-points in Table III apply. Cod fillets which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE III—SCORE DEDUCTIONS FOR SIZE OF FILLET PIECES

Number of fillet pieces less than 2 ounces per pound		Deduction points
Over—	Not over—	
	0	0
0	1	1
1	2	10
2	3	15
3	4	20

§ 263.166 Workmanship defects.

(a) The factor of "workmanship defects" refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones. Evaluation for the defect of improper packing is made on the frozen product. Evaluation of the defects of cutting and trimming, blemishes, and bones are made on the thawed product.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into the frozen fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means an instance of skin (except for skin-on fillets), scales, blood-spot, bruise, black-belly lining, fin, or extraneous material. One "instance of skin" consists of one piece of skin not less than ½ square inch and not more than 1½ square inches in area; each additional ½ square inch area of individual skin pieces greater and 1½ square inches is considered as an additional instance. One "instance of blood spot" is one of such size and prominence as to be considered objectionable. One "instance of black-belly lining" is any piece of black-belly lining not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". Each aggregate area up to 1 square inch per fillet of one scale or group of scales is considered as one "instance of scales". An "instance of bruise" consists of a bruise not less than ½ square inch and not more than 1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise.

(4) *Bones.* One "instance of bone" means one bone or one group of bones occupying or contacting a circular area up to 1 square inch.

(b) For the purpose of rating the factor of "absence of defects" the schedule of deduction-points in Table IV apply.

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Defects subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Moderate defects, noticeably affecting the product's appearance.	2

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS—Continued

Defects subfactors	Method of determining subfactor score	Deduction points
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of fish flesh:	
	Over 0 not over 1	1
	Over 1 not over 2	3
	Over 2 not over 3	5
	Over 3 not over 4	8
	Over 4 not over 5	12
	Over 5 not over 6	16
	Over 6 not over 7	30
	Over 7	40
Bones	Number of instances per 1 lb. of fish flesh:	
	Over 0 not over 1	0
	Over 1 not over 2	2
	Over 2 not over 3	4
	Over 3 not over 4	6
	Over 4 not over 5	8
	Over 5 not over 6	14
	Over 6 not over 7	30
	Over 7	40
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects, noticeable but not affecting the usability of any fillets.	45
	Excessive defects impairing:	
	(a) The usability of up to ¼ of the total number of fillets.	8
	(b) The usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The usability of over ½ of the total number of fillets.	40

§ 263.167 Character.

(a) The factor of character refers to the amount of free drip in the thawed fillets, and to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table V apply. Cod fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE V—SCORE DEDUCTIONS FOR CHARACTER

Character subfactors	Method of determining subfactor score	Deduction points
Texture	Texture of the cooked fish:	
	(a) Firm, slightly resilient but not tough or rubbery; moist but not mushy.	0
	(b) Moderately firm; only slightly tough or rubbery; does not form a fibrous mass in the mouth; moist but not mushy.	4
	(c) Moderately tough or rubbery; has noticeable tendency to form a fibrous mass in the mouth; or is dry; or is mushy.	8
	(d) Excessively tough or rubbery; has marked tendency to form a fibrous mass in the mouth; or is very dry; or is very mushy.	15
Drip	Percent of drip:	
	Over 0 not over 5	0
	Over 5 not over 6	1
	Over 6 not over 8	2
	Over 8 not over 10	4
	Over 10 not over 12	6
	Over 12 not over 14	9
	Over 14 not over 16	12
	Over 16	15

§ 263.171 Definitions and methods of analysis.

(a) *Percent of drip.* "Percent of drip" means the percent by weight of "free drip" (the fluid which is not reabsorbed by the fish tissue when the frozen fish thaws, and which separates freely without the aid of any external forces except gravity) in an individual package as determined by the following method:

(1) *Apparatus and materials.* (i) Water bath.

(ii) Balance, accurate to 0.1 gm; or 0.01 ounce.

(iii) Pliable and impermeable bag (cryovac, pliofilm, etc.).

(iv) Corrosion resistant metal rod weight (preferably stainless steel or monel metal), measuring 3½ inches in length and approximately ¼–½ inch in diameter.

(v) U.S. Standard No. 8 mesh circular sieve (both 8 and 12 inch diameters).

(vi) Stirring motor.

(vii) Identification tags.

(2) *Procedure.* (i) Place metal rod weight into an empty pliable bag.

(ii) Weigh the bag and the metal weight.

(iii) Remove the frozen fish material from the container (container consists of the carton and the inner and outer wrapping).

(iv) Place the frozen product, plus scraps of any material remaining in the container, into the pliable bag.

(v) Weigh the bag and its contents and subtract tare (empty bag and metal weight) to determine the net weight of the product.

(vi) Suspend the bag and contents in an agitated water bath maintained at 68° F. plus or minus 2° F. The bag should be suspended in the water so that the fish flesh is below the water line.

(vii) Allow the bag and its contents to remain immersed until the product is defrosted (a "test run", in advance, is necessary to determine time required for each product and quantity of product.)[1]

(viii) Remove bag and contents from bath and gently dry outside of bag.

(ix) Weigh dry U.S. Standard No. 8 mesh circular sieve.

(x) Open bag and empty contents onto U.S. Standard No. 8 circular sieve so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes.

(xi) Weigh sieve and its contents and calculate drained weight. The drained weight is the weight of sieve and fillets less the weight of the dry sieve.

(xii) Calculate percent drip:

Net weight (v)−drained weight (xi)×(100)/
Net weight (v)=Percent of drip

(b) *Cooking in a suitable manner.* "Cooking in a suitable manner" shall means that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch; fold the open end of the pouch over the suspension bar and clamp in place to provide a loose seal. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter. (Regulations Governing Processed Fishery Products.)

SCORE SHEET

§ 263.181 Score sheet for cod fillets.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Type of overwrap ....
Actual net weight: ———(lb.) ———(kg.) ....

Factor	Score points	Sample score
Appearance	25	....
Size	20	....
Absence of defects	40	....
Character	15	....
Total	100	....

Flavor and odor ....
Final grade ....

Subpart C—United States Standards for Grades of Flounder and Sole Fillets

§ 263.201 Description of the product.

Frozen flounder and sole fillets consist of clean, wholesome fillets processed and frozen in accordance with good commercial practice and maintained at temperatures necessary for their preservation. The fillets may be cut transversely or longitudinally into subunits.

NOTE: This standard does not provide for the grading of units of fish flesh cut from previously frozen fish blocks, slabs, or similar material.

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[1] The purpose of the "test run" is to determine the time necessary to thaw the product. The complete thawing of the product is determined by frequent but gentle squeezing of the bag until no hard core or ice crystals are felt. This package which has been squeezed cannot be used for drained weight calculations.

The product covered by this standard is prepared from the following species only:

SOLE

Dover sole (Microstomus pacificus).
English sole (Parophrys vetulus).
Gray sole (Glyptocephalus cynoglossus).
Petrale sole (Eopsetta jordani).
Lemon sole (Pseudopleuronectes americanus, over 3½ pounds).
Rock sole (Lepidopsetta bilineata).
Sand sole (Psettichthys melanostictus).

FLOUNDER

Blackback (Pseudopleuronectes americanus, less than 3½ pounds).
Yellowtail flounder (Limanda ferruginea).
Dab, plaice (Hippoglossoides platessoides).
Fluke (Paralichthys dentatus).
Starry flounder (Platichtys stellatus).

§ 263.202 Product forms.

(a) Types:
(1) Fresh,
(2) Frozen solid packs; glazed or unglazed,
(3) Frozen individually; glazed or unglazed.
(b) Styles:
(1) Skin on,
(2) Skin on, white side only,
(3) Skinless.

§ 263.203 Grades of frozen flounder and sole fillets.

(a) "U.S. Grade A" is the quality of frozen flounder or sole fillets for which the total score is not less than 85 points, when the fillets are rated in accordance with the scoring system outlined in the following sections.

(b) "U.S. Grade B" is the quality of frozen flounder or sole fillets for which the total score is less than 85 points but is not less than 70 points, when the fillets are rated in accordance with the scoring system outlined in the following sections.

(c) "Substandard" is the quality of frozen flounder or sole fillets that fail to meet the requirements of the U.S. Grade B.

§ 263.211 Determination of the grade.

The grade is determined by observing the product in the frozen, thawed, and cooked states and is evaluated by numerical scoring. Points are deducted for variations of quality for each factor in accordance with the schedule in Table 1. The total of the points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER POUND OF FLOUNDER OR SOLE FILLETS AND GRADING SCORE SHEET

Scored factors	Description of quality variation	Deduct	Deductions
	FROZEN		
1. Appearance	Adversely affected by imbedded packaging material, voids, depressions, surface irregularity, and poor arrangements of fillets:.		
	Slight	2	
	Moderate	4	
	Excessive	10	
2. Dehydration	For each inch square (determined by grid) of affected area:		
	Color masking, easily scraped off	½	
	Deep, not easily scraped off	1	
	THAWED		
3. Weights	(a) For each fillet or piece less than 1 oz., except first fillet or piece	5	
	(b) For sole only: For each fillet from 1–2 oz., except first fillet	2	
	For flounder only: For each fillet from 1–2 oz., except first three fillets	2	
4. Workmanship defects	For each inch square (determined by grid) of affected area:		
	(a) Cutting and trimming (ragged edges holes, tears, improper or unnecessary cuts and lace).	½	
	(b) Blemishes (belly lining, blood spots, bruises, extraneous material, fins, discolored pugh marks, scales and skin).	2	
	(c) Bones normally removed	3	
5. Color	(a) Deteriorative discoloration (yellowing of fatty portion and/or darkening of light portion).	3	
	Slight	2	

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER POUND OF FLOUNDER OR SOLE FILLETS AND GRADING SCORE SHEET—Continued

Scored factors	Description of quality variation	Deduct	Deductions
	Moderate	5	
	Excessive	15	
	(b) Nonuniformity of color (natural color differences within package due to packing fish of contrasting color):		
	Moderate	3	
	Excessive	5	
6. Abnormal condition	Usability and/or desirability of fillets impaired by abnormal conditions (jellied, milky, chalky):		
	Moderate	16	
	Excessive	31	
	COOKED		
7. Texture	Tough, dry, fibrous, or watery for species involved:		
	Slight	4	
	Moderate	8	
	Excessive	15	
8. Odor and flavor	Very good: Full typical odor and flavor of fresh fish		
	Good: Noticeable decrease in typical odor and flavor of fresh fish	6	
	Reasonably good: Lacking typical odor and flavor of fresh fish, but not objectionable.	16	
	Substandard: Objectionable odor and/or flavor	31	

Total deductions

Score (100 minus total deductions)

Grade (100 to 85 = Grade A; 84 to 70 = Grade B; 69 and below = Substandard)

Label

Size of lot

Size of sample

Number of packages per master carton

Actual net weight.........lb.........oz

Size and kind of container

Container mark or identification

Type of overwrap

Remarks

§ 263.221 Definitions.

(a) "*Slight*" refers to a condition that is scarcely noticeable but that does affect the appearance, desirability, and/or eating quality of the fillets.

(b) "*Moderate*" refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, and/or eating quality of the fillets.

(c) "*Excessive*" refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability and/or eating quality of the fillets.

(d) "*Bones normally removed*" refers to (1) nape membrane bones (adjacent to visceral cavity) and to (2) radial bones (adjacent to fins and lace area).

(e) "*Determined by grid*" means that a transparent grid of 1-inch squares is placed over the defect area, and points are deducted (as specified in Table 1) for each square of affected area under the grid, each square being counted as one whether it is full or fractional.

(f) "*Thawed state*" means that the frozen product has been placed within a film-type pouch and warmed to an internal temperature of about 32° F by immersing the pouch in running tap water of about 50° to 70° F. Thawing time usually takes 25 to 45 minutes for a 1-pound package.

(g) "*Cooked state*" means that the thawed, unseasoned product has been placed within a boilable film-type pouch and heated to an internal temperature of about 160° F by immersing the pouch in boiling water. Cooking time usually ranges from 3 to 5 minutes for single fillets and from 7 to 10 minutes for 1-pound packages of fillets.

(h) "*Actual net weight*" means the weight of the fish flesh within the package after all packaging material, ice glaze, or other protective coating have been removed. ("Actual net weight" of frozen glazed fillets is determined as follows:

(1) Rapidly remove excessive ice layers or pockets with running tap water or nozzle-type water spray.

(2) Rapidly thaw remaining surfaces of frozen fish sufficiently with tap water or spray to prevent refreezing free surface water.

(3) Gently wipe off all free water with a moisture-saturated paper towel.

(4) Weigh the fish to obtain "actual net weight".)

(i) "*Abnormal condition*" means that the normal physical and/or chemical structure of the fish flesh has been sufficiently altered so that the usability and/or desirability of the fillet is adversely affected. It includes, but is not limited to, the following examples:

(1) "*Jellied*" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a gelatinous glossy, translucent appearance, feels slimy to the touch, and retains its gelatinous, slimy properties in the cooked state.

(2) "*Milky*" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a milky-white, excessively mushy, pasty, or fluidized appearance.

(3) "*Chalky*" refers to the abnormal condition wherein a fillet is partly or wholly characterized by a dry, chalky granular appearance and fiberless structure.

(j) "*Odor and flavor*" is classified as follows:

(1) "*Very good*": Fish in this category have essentially the full, good, typical odor, and flavor of the indicated species.

(2) "*Good*": Fish in this category show a noticeable decrease of the good typical odor and flavor of the indicated species, and/or may have certain less acceptable natural environmental odors and flavors of slight intensity (iodoform-type, phenolic-type, feed-type, etc.), but may have no off odors and flavors.

(3) "*Reasonably good*": Fish in this category may be flat, or completely lacking in the good, typical odor and flavor of the indicated species, and/or may have certain less acceptable natural environmental odors and flavors of moderate intensity (iodoform-type, phenolic-type, feed-type, etc.), but may have no objectionable odors and flavors.

(4) "*Substandard*": Fish in this category have odors and flavors that are objectionable.

§ 263.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart D—United States Standards for Grades of Haddock Fillets

§ 263.251 Product description.

The product described in this part consists of clean, whole, wholesome fillets or primarily large pieces of clean, whole, wholesome fillets, cut away from either side of haddock, Melanogrammus aegiefinus; the fillets may be either skinless or with skin on. They are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product. (This part does not provide for the grading of pieces of fish flesh cut away from previously frozen fish blocks, slabs, or similar products.)

§ 263.252 Grades of frozen haddock fillets.

(a) "U.S. Grade A" is the quality of haddock fillets that possess a good flavor and odor; and for those factors which are rated in accordance with the scoring system outlined in this part have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of haddock fillets that possess at least a reasonably good flavor and odor; and for those factors which are rated in accordance with the scoring system outlined in this part have a total score of not less than 70 points: *Provided*, That no factor receives maximum point score deduction.

(c) "Substandard" is the quality of haddock fillets that fail to meet the requirements of U.S. Grade B.

§ 263.254 Product forms.

(a) Types:

(1) Fresh,

(2) Frozen, solid pack; glazed and unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on,

(2) Skinless.

§ 263.256 Recommended weights and dimensions.

(a) The recommendations as to net weights and dimensions of packaged haddock fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weights of the packaged haddock fillets be not less than 12 ounces and not over 10 pounds.

§ 263.261 Ascertaining the grade.

The grade of haddock fillets is ascertained by observing the product in the frozen and thawed states and after representative sample units have been cooked in a suitable manner. The following factors are evaluated in ascertaining the grade of the product: Flavor, odor, appearance, size, defects, and character.

(a) These factors are rated in the following manner:

(1) *Flavor and odor.* These factors are rated by organolepic examination. Score points are not assessed (see § 263.262).

(2) *Appearance, size, defects, and character.* These factors are rated by score points expressed numerically on the scale of 100.

(b) The four factors and the maximum number of points that may be given each are as follows:

Factors	Points
Appearance	25
Size	20
Defects	40
Character	51
Total score	100

§ 263.262 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of haddock (Melanogrammus aeglefinus); and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement of a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.263 Ascertaining the rating for the factors which are scored; appearance, size, workmanship defects, and character.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The value for each factor is the maximum points allotted for the factor less the sum of the deduction-points within the factor.

§ 263.264 Appearance.

(a) General: The factor of appearance refers to the color of the fish flesh, and to the degree of surface dehydration of the product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Tables I and II apply. Haddock fillets which receive 25 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR COLOR SUBFACTOR

Color	Deduction points	
	"Light" colored portion comprising main portion of fillet	"Dark" colored portion occurring under skin mainly along lateral line
No descoloration	0	0
Slight yellowing	2	1
Moderate yellowing	4	2
Excessive yellowing and/or any rusting	13	12

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION SUBFACTOR

Degree of dehydration	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep but just deep enough to easily scrape off with fingernail.	1	25	5
	25	50	8
	50	100	18
Excessive—Deep dehydration not easily scraped off.	1	25	12
	25	100	25

§ 263.265 Size.

(a) General: The factor of size refers to the degree of freedom from undesirably small fillet pieces. Any piece weighing less than 2 ounces is classed undesirably small.

(b) For the purpose of rating the factor of size the schedule of deduction-points in Table III apply. Haddock fillets which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE III—SCORE DEDUCTIONS FOR SIZE OF FILLET PIECES

Number of fillet pieces less than 2 ounces per pound		Deduction points
Over—	Not over—	
	0	0
0	1	1
1	2	10
2	3	15
3	4	20

§ 263.266 Workmanship defects.

(a) General: The factor of workmanship defects refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means a piece of skin (except for skin-on fillets), scales, blood spot, a bruise, a black belly lining, a fin, or extraneous material. One "piece of skin" consists of one piece at least ½ square inch in area, except that any skin patches larger than 1½ square inches are each considered as two pieces of skin. "Blood spot" is one of such size and prominence as to be considered objectionable. "Black belly lining" is any piece longer than ½ inch. Each aggregate area up to 1 square inch of identifiable fin or parts of any fin is considered as one "instance of fin". Each aggregate area up to 1 square inch per fillet of one scale or group of scales is considered one "instance of scales". "A bruise" consists of an affected area of ½ square inch or more in area: except that any bruise larger than 1½ square inches is considered as two bruises.

(4) *Bones.* "Bones" means any bones that can be identified and are objectionable. One instance of bone means one bone or one group of bones occupying or contacting a circular area of 1 square inch.

(b) For the purpose of rating the factor of freedom from defeats, the schedule of deduction-points in Table IV apply.

TABLE IV—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Defects subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Moderate defects, noticaably affecting the products appearance.	2
	Excessive defects, seriously affecting products appearance.	4
Biemishes	Number of blemishes per 1 lb. of fish flesh:	
	Over 0 not over 1	1
	Over 1 not over 2	3
	Over 2 not over 3	5
	Over 3 not over 4	8
	Over 4 not over 5	16
	Over 5 not over 6	30
	Over 6	40
Bones	Number of instances per lb. of fish flesh:	
	Over 0 nor over 1	0
	Over 1 not over 2	5
	Over 2 not over 3	10
	Over 3 not over 4	15
	Over 4 not over 5	30
	Over 5	40
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects, noticable but not affecting the useability of any fillets.	4
	Excessive defects impairing:	
	(a) The useability of up to ¼ of the total number of fillets.	8
	(b) The useability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The useability of over ½ of the total number of fillets.	40

§ 263.267 Character.

(a) General: The factor of character refers to the amount of drip in the thawed fillets, and to the tenderness and moistness of the properly cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table V apply. Haddock fillets which receive 15 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE V—SCORE DEDUCTIONS FOR CHARACTER

Character subfactors	Method of determining subfactor score	Deduction points
Texture	Texture of the cooked fish:	
	(a) Firm, slightly resilient but not tough or rubbery; moist but not mushy.	0
	(b) Moderately firm; only slightly tough or rubbery; does not form a fibrous mass in the mouth; moist but not mushy.	4
	(c) Moderately tough or rubbery; has noticeable tendency to form a fibrous mass in the mouth; or is dry; or is mushy.	8
	(d) Excessively tough or rubbery; has marked tendency to form a fibrous mass in the mouth; or is very dry; or is very mushy.	15
Amount of drip	Percent of drip:	
	Over 0 not over 5	0
	Over 5 not over 6	1
	Over 6 not over 8	2
	Over 8 not over 10	4
	Over 10 not over 12	6
	Over 12 not over 14	9
	Over 14 not over 16	12
	Over 16	15

§ 263.271 Definitions and methods of analysis.

(a) *Percent of drip.* "Percent of drip" means the percent by weight of "free drip" (the fluid which is not reabsorbed by the fish tissue when the frozen fish thaws, and which separates freely without the aid of any external forces except gravity) in an individual package as determined by the following method:

(1) *Apparatus and materials.* (i) Water bath.

(ii) Balance, accurate to 0.1 gm; or 0.01 ounce.

(iii) Pliable and impermeable bag (cryovac, pliofilm, etc.).

(iv) Vacuum source (Vacuum pump or water aspirator).

(v) U.S. Standard No. 8 mesh circular sieve (both 8 and 12 inch diameters).

(vi) Stirring motor.

(vii) Identification tags.

(2) *Procedure.* (i) Weight pliable and impermeable bag (cryovac, pliofilm, etc.).

(ii) Remove frozen material from container (container consists of the carton and the inner and outer wrappings).

(iii) Place frozen product, plus scraps of any material remaining on the container, into the pliable bag.

(iv) Weigh bag and contents and subtract tare to determine the net weight of the product.

(v) Evacuate air from bag by use of suction so that bag closely fits contour of product, with no air pockets.

(vi) Crimp the open end of bag and tie off (a secure and leakproof closure may be created by tying close to product and then folding excess bag and tying again).

(vii) Completely immerse bag and contents in a circulated water bath maintained at 68° F. plus or minus 2° F.

(viii) Allow to remain immersed until the product is defrosted (a "test run" in advance, is necessary to determine time required for each product and quantity of product).[1]

(ix) Remove bag and contents from bath and gently dry outside of bag.

(x) Weigh dry U.S. Standard No. 8 mesh circular sieve.

(xi) Open bag and empty contents onto U.S. Standard No. 8 circular sieve so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes.

(xii) Weigh sieve and its contents and calculate drained weight. The drained weight is the weight of the sieve and fillets less the weight of the dry sieve.

(xiii) Calculate percent drip:

Net weight (iv) − drained weight (xii) × (100)/ Net weight = Percent of drip

(b) *Cooking in a suitable manner.* "Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. The pouch and its contents are then immersed in boiling water and cooked until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.275 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter, (Regulations Governing Processed Fishery Products).

§ 263.281 Score sheet for haddock fillets.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Type of overwrap ....
Actual net weight————(lb.)————(kg.)...

Factor	Score points	Sample score
Appearance	25	....
Uniformity	20	....
Defects	40	....
Character	15	....
Total	10	....

Flavor and odor ....
Final grade ....

Subpart E—United States Standards for Grades of Ocean-Perch Fillets and Pacific Ocean-Perch Fillets

§ 263.301 Product description.

The product described in this part consists of: (a) Clean, whole, wholesome fillets, cut away from either side of the ocean perch, Sebastes marinus, which are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product; or (b) clean, whole, wholesome fillets, cut away from either side of the Pacific ocean perch, Sebastodes alutus, which are packaged in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 263.302 Grades of ocean-perch fillets.

(a) "U.S. Grade A" is the quality of ocean-perch fillets that possess good

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[1] The purpose of the "test run" is to determine the time necessary to thaw the product. The complete thawing of the product is determined by frequent but gentle squeezing of the bag until no hard core of ice crystals are felt. This package which has been squeezed can not be used for drained weight calculations.

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flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of ocean-perch fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of ocean-perch fillets that fail to meet the requirements of U.S. Grade B.

§ 263.304 Product forms.

(a) Types:

(1) Fresh.

(2) Frozen, solid pack; glazed and unglazed.

(3) Frozen individually; glazed or unglazed.

(b) Styles:

(1) Skin on.

(2) Skinless.

§ 263.306 Recommended weights and dimensions.

(a) The net weights and dimensions of packaged ocean-perch fillets and Pacific ocean-perch fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weight of the packaged ocean-perch fillets and Pacific ocean-perch fillets be not less than 12 ounces and not over 10 pounds and that the product be classified as large, medium, or small as classified by common commercial size classification practices.

§ 263.311 Ascertaining the grade.

The grade of ocean-perch fillets is ascertained by examining the product in the frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, workmanship defects, and character. These factors are rated in the following manner:

(a) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 263.312).

(b) *Appearance, size, workmanship defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	15
Size	20
Absence of defects	50
Character	15
Total possible score	100

§ 263.312 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of the species (either Sebastes marinus or Sebastodes alutus) and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 263.313 Evaluation and rating of the scored factors; appearance, size, absence of defect, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 263.314 Appearance.

(a) The factor of appearance refers to the color of the fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Table I apply. Frozen ocean-perch fillets which receive 15 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORE DEDUCTIONS FOR APPEARANCE

Color of product	Deduction points
No discoloration	0
Slight yellowing	4
Moderate yellowing	9
Excessive yellowing and/or rusting	15

TABLE II—SCORE DEDUCTIONS FOR DEHYDRATION SUBFACTOR

Degree of drhydration of frozen product	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking.	0	1	0
	1	50	2
	50	100	5
Moderate—Deep, but just deep enough to easily scrape with fingernail.	0	25	5
	25	50	10
	50	100	15
Excessive—Deep dehydration not easily scraped off.	0	10	10
	5	15	15

§ 263.315 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillets.

(b) For the purpose of rating the factor of size, the schedule of deduction-points in Table II apply. Ocean-perch fillets which receive 20 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE II—SCORE DEDUCTIONS FOR SIZE OF FILLETS

[Deduction points]

Number of fillets per pound	Number of small fillets or pieces of fillets											
	0	1	2	3	4	5	6	7	8	9	10	11
	Under two ounces in weight											
2	0	5	....	....	....	....	....	....	....	....	....	....
3	0	5	10	....	....	....	....	....	....	....	....	....
4	0	4	7	10	....	....	....	....	....	....	....	....
5	0	4	7	10	15	....	....	....	....	....	....	....
6	0	3	6	9	15	20	....	....	....	....	....	....
	Under one ounce in weight											
7	0	5	10	15	20	20	20	....	....	....	....	....
8	0	5	10	15	20	20	20	20	....	....	....	....
9	0	0	5	10	15	20	20	20	20	....	....	....
10	0	0	5	10	15	20	20	20	20	20	....	....
11	0	0	5	10	15	20	20	20	20	20	20	....
12	0	0	4	7	10	15	15	20	20	20	20	20
13	0	0	0	4	7	10	15	15	15	20	20	20
14	0	0	0	1	4	7	10	15	15	15	20	20
15 or more	0	0	0	0	1	4	7	10	15	15	15	20

§ 263.316 Workmanship defects.

(a) The factor of "workmanship defects" refers to the degree of freedom from improper packing, cutting and trimming imperfections, blemishes, and bones. Evaluation for the defect of improper packing is made on the frozen product. Evaluation of the defects of cutting and trimming, blemishes, and bones are made on the thawed product.

(1) *Improper packing.* "Improper packing" means poor arrangement of fillets, presence of voids, depressions, frost, and the imbedding of packaging material into the frozen fish flesh.

(2) *Cutting and trimming imperfections.* "Cutting and trimming imperfections" means that the fillets have ragged edges, tears, holes, or are otherwise improperly cut or trimmed.

(3) *Blemish.* "Blemish" means an instance of blood-spot, bruise, black-belly lining or membrane, fin, scales, or extraneous material. Blemish also means an instance of skin on skinned fillets. One "instance of blood spot" is one of such size and prominence as to be considered objectionable. An "instance of bruise" consists of a bruise not less than ½ square inch and not more than 1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise. An "instance of black-belly lining or membrane" is any piece of black-belly lining or membrane not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining or membrane longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". One "instance of scales" is an aggregate area of scales greater than ½ square inch per fillet. One "instance of skin" consists of one piece of skin at least ½ square inch in area; except that any skin patches larger than 1½ square inches are considered as two instances of skin.

(4) *Bones.* One "instance of bones" means an objectionable bone or group of bones occupying or contacting a circular area up to 1 square inch. An objectionable bone is any bone of such size and rigidity as to remain objectionable after cooking. Bones which will soften or disintegrate after cooking are not considered objectionable.

(b) For the purpose of rating the factor of absence of defects the schedule of deduction-points in Table III applies.

TABLE III—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS

Subfactors	Method of determining subfactor score	Deduction points
Improper packing.	Slight defects, not noticeably affecting the product's appearance.	0
	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 2	0
	Over 2 not over 4	2
	Over 4 not over 5	4
	Over 5 not over 6	7
	Over 6 not over 7	10
	Over 7 not over 8	15
	Over 8 not over 9	20
	Over 9 not over 10	30
	Over 10 not over 11	40
	Over 11	50
	Number of blemishes per 1 lb. of product when there are 7 to 12 (inclusive) fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 5	2
	Over 5 not over 6	4
	Over 6 not over 7	7
	Over 7 not over 8	10
	Over 8 not over 9	15
	Over 9 not over 10	20
	Over 10 not over 11	30
	Over 11 not over 12	40
	Over 12	50
	Number of blemishes per 1 lb. of product when there are 13 or more fillets per lb.:	
	Over 0 not over 6	0
	Over 6 not over 8	2
	Over 8 not over 9	4
	Over 9 not over 10	7
	Over 10 not over 11	10
	Over 11 not over 12	15
	Over 12 not over 13	20
	Over 13 not over 14	30
	Over 14 not over 15	40
	Over 15	50
Bones	Number of instances per lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 4	0
	Over 4 not over 5	1
	Over 5 not over 6	2
	Over 6 not over 7	5
	Over 7 not over 8	12
	Over 8 not over 9	20
	Over 9 not over 10	35
	Over 10	50
	Number of instances per lb. of product when there are 7 or more fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 4	1
	Over 4 not over 5	2
	Over 5 not over 6	5
	Over 6 not over 7	12
	Over 7 not over 8	20

TABLE III—SCORE DEDUCTIONS FOR WORKMANSHIP DEFECTS—Continued

Subfactors	Method of determining subfactor score	Deduction points
	Over 8 not over 9	35
	Over 9	50
Cutting and trimming.	Slight defects, scarcely noticeable.	0
	Moderate defects noticeable but not affecting the usability of any fillets.	4
	Excessive defects impairing.	
	(a) The usability of up to ¼ of the total number of fillets.	8
	(b) The usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) The usability of over ½ of the total number of fillets.	40

§ 263.317 Character.

(a) General: The factor of character refers to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table IV apply. Ocean-perch fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE IV—SCORE DEDUCTIONS FOR CHARACTER

Texture of the cooked fish	Point deductions
1. Texture:	
(a) Firm, but tender and moist	0
(b) Slightly tough, dry, and/or fibrous, or mushy	4
(c) Moderately tough, rubbery, and/or fibrous	8
(d) Excessively tough, rubbery, and/or fibrous	15

§ 263.321 Cooking in a suitable manner.

"Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. Fold the pouch over a suspension bar and clamp it in place so that a loose seal is maintained. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

§ 263.325 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 Subpart A of this chapter (Regulations Governing Processed Fishery Products).

§ 263.331 Score sheet for ocean-perch fillets.

Label ....
Size and kind of container ....
Container mark or identification ....
Size of lot ....
Number of packages per master carton ....
Size of sample ....
Type of overwrap ....
Actual net weight ——— (lb.) ——— (kg.) ....

Factor	Score points	Sample score
Appearance	15	
Size	20	
Absence of defects	50	
Character	15	
Total	100	

Flavor and odor ....
Final grade ....

PART 264—UNITED STATES STANDARDS FOR GRADES OF FROZEN FISH BLOCKS AND PRODUCTS MADE THEREFROM

Subpart A—United States Standards for Grades of Frozen Fish Blocks

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264.101 Description of the product.
264.102 Grades of frozen fish blocks.
264.111 Determination of the grade.
264.121 Definitions.
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Subpart B—United States Standards for Grades of Frozen Minced Fish Blocks

264.151 Scope and product description.
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264.201 Description of the product.
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Subpart D—United States Standards for Grades of Frozen Raw Breaded Fish Sticks

264.251 Description of the product.
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264.301 Description of the product.
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264.303 Composition of product.
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264.322 Use of alternate methods of fish flesh determination.
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Subpart F—United States Standards for Grades of Frozen Fried Fish Sticks

264.351 Description of the product.
264.352 Composition of the product.
264.353 Grades.
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264.372 Use of alternate methods for determining fish flesh content.
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Subpart G—United States Standards for Grades of Frozen Fried Fish Portions

264.401 Description of the product.
264.402 Composition of the product.
264.403 Grades.
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264.411 Determination of the grade.
264.421 Definitions.
264.422 Use of alternate methods for determining fish flesh content.
264.425 Tolerances for certification of officially drawn samples.

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52764, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Fish Blocks

§ 264.101 Description of the product.

Frozen fish blocks are rectangular-shaped masses of cohering frozen fish flesh of a single species. They consist of adequately drained whole, wholesome fillets or pieces of whole, wholesome fillets cut into small portions but not ground or comminuted; and they are frozen and maintained at temperatures necessary for the preservation of the product. Frozen fish blocks are made in two styles.

(a) *Style I—skinless fish blocks.* Fish blocks that have been made from skinless fillets.

(b) *Style II—skin-on fish blocks.* Fish blocks that have been made from demonstrably acceptable skin-on fillets.

§ 264.102 Grades of frozen fish blocks.

(a) "U.S. Grade A" is the quality of frozen fish blocks that (1) possess a good flavor and odor and that (2) have a total score of 85 to 100 points for those factors that are rated in accordance with the scoring system outlined in this part.

(b) "U.S. Grade B" is the quality of frozen fish blocks that (1) possess at least a reasonably good flavor and odor and that (2) have a total score of 70 to 84 points for those factors that are rated in accordance with the scoring system in this part.

(c) "Substandard" is the quality of frozen fish blocks that meet product description but fail to meet the requirements of U.S. Grade B.

§ 264.111 Determination of the grade.

The grade is determined by examining the product in the frozen, thawed, and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points* Points are deducted for variation in the quality of each factor in accordance with the schedule in table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with § 264.121.

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT

Factors scored	Aspects determining score	Deduct
	FROZEN STATE	
1 Color	Small degree: Moderate yellowing	4
	Large degree: Excessive yellowing and/or rusting	16
2 Dehydration	Minor: Moderate dehydration for each 10 percent of surface area affected.	3
	Major: Excessive dehydration for each 10 percent of surface area affected.	6
3 Uniformity of size	Minor: Each deviation from declared size in length, width, or thickness ± ⅛ to ¼ inch.	3
	Major: Each deviation from declared size in length, width, or thickness over ± ¼ inch.	6
4 Uniformity of weight	Minor: Any minus deviation from declared weight of more than 1 ounce but not more than 4 ounces.	3
	Major: Any minus deviation from declared weight more than 4 ounces	8
5 Angles	Edge angle—2 out of 3 readings deviating ⅜ inch	2
	Corner angle—each angle deviating ⅜ inch	
6 Improper fill	For each 1 ounce unit cut from the block that would be adversely affected due to air spaces, ice spaces, depressions, ragged edges, damage, or imbedded packaging material.	1
	THAWED STATE	
7 Blemishes	Each blemish in 5 pounds of fish block	2
8 Bones	Each instance of bones in 5 pounds of fish block	5
	COOKED STATE	
9 Texture	Small degree: Moderately tough, dry, rubbery, or mushy	5
	Large degree: Excessively tough, dry, rubbery, or mushy	15

§ 264.121 Definitions.

(a) *Examination of sample, frozen state.* (1) Color refers to reasonably uniform color characteristics of the species used. Deviations from normal color include noticeable yellowing and/or rusting of the fish surface.

(2) Dehydration refers to loss of moisture from the fish surfaces during frozen storage. Moderate dehydration is color-masking masking and can easily be scraped off with a fingernail. Excessive dehydration is deep color-masking and requires a knife or other hard instrument to scrape it off.

(3) Uniformity of size refers to the degree of conformity to the declared size. A deviation is considered to be any deviation from stated length, width, or thickness, or from the average dimensions if no dimensions are stated. Only one deviation from each dimension may be assessed. Two read-

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ings for length, three readings for width, and four readings for thickness will be measured.

(4) Uniformity of weight refers to the degree of conformity to the weight. Only underweight deviations are assessed.

(5) An acceptable edge angle is an angle formed by two adjoining surfaces whose apex is within ⅜ inch of a carpenter's square placed along the surfaces. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅜ inch of the apex of a carpenter's square placed on the edge surfaces. Unacceptable angles fail to meet these criteria.

(6) Improper fill refers to surface and internal air or ice voids, ragged edges, or damage. It is measured as the number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the 1-ounce unit is considered to be 4 × 1 × ⅝ inch.

(b) *Examination of the product, thawed state.* (1) Blemishes refer to a piece of skin, scale, a blood spot, a fin, a bruise, a black belly lining, a piece of nape membrane or a harmless piece of extraneous material. One "piece of skin" consists of one piece ½ square inch in area; except that for skin patches larger than 1 square inch, an additional instance shall be assessed for each additional ½ square inch in area. "Blood spot" is one of such size and degree as to be considered objectionable. A "piece of black belly lining" is any piece longer than ½ inch. "Fin" is one fin or one identifiable part of a fin. A piece of nape membrane consists of one piece ½ square inch in area or larger. "Scales" are aggregates of one or more scales of such degree as to be considered objectionable. Skin is not to be considered a blemish on Style II block. Blemishes are measured on a 5-pound portion cut from the edge of the fish block and thawed.

(2) "Bones" refers to any potentially harmful bones in the fish block. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate. One instance of bones means one bone or group of bones occupying or contacting a circular area of 1 square inch. Bones are measured on the same 5-pound thawed portion cut from the fish block.

(c) *Examination of the cooked product.* (1) Heating in a suitable manner means heating the product in one of two ways, as follows:

(i) Cut three or more portions about 4 by 3 by ½ inches from a frozen block. Wrap them individually or in a single layer in aluminum foil. Place the package portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions until the product is thoroughly heated, or

(ii) Cut and package the portions as previously described. Place the packaged portions on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven heated to 400° F. and remove when the product is thoroughly heated.

(2) Texture refers to the condition of the cooked fish flesh. The texture should be firm, slightly resilient, but not tough or rubbery; and should be moist, but not mushy. Deductions for texture will follow the deductions assessed in table 1.

(3) Flavor and odor is evaluated organoleptically as described in § 263.11(b).

(d) *General definitions.* (1) "Demonstrably acceptable" shall mean that the product has been produced commercially and met customer acceptance.

(2) "Adversely affected" shall mean that the unit cut would deviate more than 15 percent plus or minus from 1 ounce.

(3) "Small" (overall assessment) refers to a condition that is noticeable, but is not seriously objectionable.

(4) "Large" (overall assessment) refers to a condition that is not only noticeable, but is seriously objectionable.

(5) "Minor" (measured quantity or area) refers to a defect that affects

the appearance or utility of the product or both.

(6) "Major" (measured quantity or area) refers to a defect that seriously affects the appearance or utility of the product or both.

§ 264.125 Tolerances for certification of officially drawn samples.

The sample rates and grades of specific lots shall be certified on the basis of the regulations governing inspection and certification of processed fishery products, processed products thereof, and certain other processed food products.

Subpart B—United States Standards for Grades of Frozen Minced Fish Blocks

SOURCE: 44 FR 32368, June 6, 1979, unless otherwise noted.

§ 264.151 Scope and product description.

These standards shall apply to frozen minced fish blocks which are uniformly shaped masses of cohering minced fish flesh. A block may contain flesh from a single species or a mixture of species with or without food additives. The minced flesh consists entirely of mechanically separated fish flesh processed and maintained in accordance with good commerical practice. This minced flesh is made entirely from species which are known to be safe and suitable for human consumption.

§ 264.152 Product forms.

(a) *Types.* (1) Unmodified—No food additives used.

(i) Single species.

(ii) Mixed species.

(2) Modified—Contains food additives (see § 264.155).

(i) Single species.

(ii) Mixed species.

(b) *Color classifications.* (1) White.

(2) Light.

(3) Dark.

See Appendix 1, § 264.157 for definition and method of measurement.

(c) *Texture.* (1) Coarse—Flesh has a fibrous consistency.

(2) Fine—Flesh has a partially fibrous consistency because it is a mixture of small fibers and paste.

(3) Paste/Puree—Flesh has no fibrous consistency.

§ 264.153 Grades—quality factors.

(a) *U.S. Grade A.* Minced fish blocks shall:

(1) Possess good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade A quality in accordance with § 264.154.

(b) *U.S. Grade B.* Minced fish blocks shall:

(1) Possess reasonably good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade B quality in accordance with § 264.154.

(c) *U.S. Grade C.* Minced fish blocks shall:

(1) Possess minimally acceptable flavor and odor with no objectional off-flavors or off-odors, and

(2) Comply with the limits of defects for U.S. Grade C quality in accordance with § 264.154.

§ 264.154 Determination of grade.

(a) *Procedures for grade determination.* The grade shall be determined by:

(1) Sampling in accordance with the sampling plan described in paragraph (b) of this section; (2) evaluating odor and flavor in accordance with paragraph (c) of this section; (3) examining for defects in accordance with paragraphs (d) and (e) of this section; and (4) using the results to assign a grade as described in paragraph (f) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections shall be in accordance with the sampling plans contained in Part 260 of this chapter. For examination in the frozen state, and entire block shall be used as a sample unit. For examination in the thawed state, a subsample of at least 5 pounds weight shall be used.

(c) *Evaluation of flavor and odor.* Evaluation of flavor and odor shall take place after the sample has been cooked by any of the procedures given below. These procedures are based on heating sample to internal temperature of at least 160° F (70° C) but without overcooking. Cooking times vary according to size of sample and the equipment used. If determining cooking time, cook extra sample using a temperature measuring device to determine internal temperature.

(1) Bake procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and distribute evenly on flat cookie sheet or shallow flat pan. Heat in ventilated oven, preheated to 400° F (204° C), until internal temperature reaches at least 160° F (70° C).

(2) Steam procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and place on wire rack suspended over boiling water in a covered container. Heat until internal temperature of sample reaches at least 160° F (70° C).

(d) *Examination for physical defects.* The sample unit will be examined for defects using the list of defects definitions § 264.154(e), and the defects noted and categorized as minor, major, and serious, in accordance with Table 1 of this part.

(e) *Definitions of defects*—(1) *Deteriorative color* refers to discoloration from the normal characteristics of the material used. Deterioration can be due to yellowing of fatty material, to browning of blood pigments, or other changes.

(i) Slight deteriorative discoloration—refers to a color defect that is slightly noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(ii) Moderate deteriorative discoloration—refers to a color defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(iii) Excessive deteriorative discoloration—refers to a defect that is conspicuously noticeable and that seriously affects the appearance, desirability, or eating quality of the product.

(2) *Dehydration* refers to a loss of moisture from the surfaces of the product during frozen storage.

(i) Slight dehydration—is surface color masking, affecting more than 5 percent of the area, which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 5 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 5 percent of the area, and requiring a knife or other sharp instruments to remove.

(3) *Uniformity of size* refers to the degree of conformity to the declared contracted dimensions of the blocks. A deviation is considered to be any deviation from the contracted length, width, or thickness; or from the average dimensions of the blocks, physically determined, if no dimensions are contracted. Only one deviation from each dimension may be assessed. Two readings for length, three readings for width, and four readings for thickness will be measured.

(i) Slight—two or more deviations from declared or average length, width, and thickness up to ± ⅛ inch.

(ii) Moderate—two or more deviations from declared or average length, width, and thickness from ± ⅛ inch to ± ⅜ inch.

(iii) Excessive—two or more deviations from declared or average length, width, and thickness over ± ⅜ inch.

(4) *Uniformity of weight* refers to the degree of conformity to the declared weight. Only underweight deviations are assesssed.

(i) Slight—any minus deviation of not more than 2 ounces.

(ii) Excessive—any minus deviation over 2 ounces.

(5) *Angles.* An acceptable edge angle is an angle formed by two adjoining surfaces of the fish block whose apex is within ⅜ inch of a carpenter's square placed along the surfaces of the block. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅜ inch of the apex of a carpenter's square placed on the edge surfaces. Any edge or corner angle which fails to meet these measurements is unacceptable.

(i) Slight—two unacceptable angles.

(ii) Moderate—three unacceptable angles.

(iii) Excessive—four or more unacceptable angles.

(6) *Improper fill* refers to surface and internal air or ice voids, ragged edges, or damage. Improper fill is measured as the minimum number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the dimensions of a 1-ounce unit are 4×1×⅝ inch.

(i) Slight—1 to 3 units adversely affected.

(ii) Excessive—over 3 units adversely affected.

(7) *Blemishes* refer to pieces of skin, scales, blood spots, nape (belly) membranes (regardless of color), or other harmless extraneous material. One instance means that the area occupied by a blemish or blemishes is equal to a ¼ inch square. Instances are prorated on a per pound basis.

(i) Slight—5 to 15 instances per pound.

(ii) Moderate—more than 15 but less than 30 instances per pound.

(iii) Excessive—30 or more instances per pound.

(8) *Bones* refer to any objectionable bone or piece of bone that is ¼ inch or longer and is sharp and rigid. Perceptible bones shall also be checked by their grittiness during the normal evaluation of the texture of the cooked product (10). Bones are prorated on a five pound sample unit basis.

(i) Slight—1 to 2 bones per five pound sample unit.

(ii) Moderate—3 to 4 bones per five pound sample unit.

(iii) Excessive—over 4 bones, but not to exceed 10 bones, per five pound sample unit.

(9) *Flavor and odor* are evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with § 264.154 (c).

(i) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the flavor and odor characteristic of the indicated species of fish and is free from staleness, bitterness, rancidity, and off-flavors and off-odors of any kind.

(ii) Reasonably good flavor and odor (minimum requirements of Grade B product) means that the cooked product is moderately absent of flavor and odor characteristic of the indicated species. the product is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(iii) Minimal acceptable flavor and odor (minimum requirements of a Grade C product) means that the cooked product has moderate storage-induced flavor and odor, but is free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

(10) *Texture defects* are judged on a sample of the cooked fish.

(i) Slight—flesh is fairly firm, only slightly spongy or rubbery. It is not mushy. There is no grittiness due to bone fragments.

(ii) Moderate—flesh is mildly spongy or rubbery. Slight grittiness may be present due to bone fragments.

(iii) Excessive—flesh is definitely spongy, rubbery, very dry, or very mushy. Moderate grittiness may be present due to bone fragments.

(f) *Grade assignment.* The sample unit shall be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

	Flavor and odor	Maximum number of physical defects permitted		
		Minor	Major	Serious
Grade A	Good	3	0	0
Grade B	Reasonably good	5	1	0
Grade C	Minimal acceptable	7	3	1

Each lot of minced blocks shall be assigned that grade which corresponds to the acceptance number for deviants prescribed in Tables II, V, or VI of 50 CFR 260.61.

§ 264.155 Additives

Minced fish blocks may be modified with food additives as necessary to stabilize product quality in accordance with the requirements of the regulations contained in 21 CFR Part 171.

§ 264.156 Hygiene

The fish material shall be processed and maintained in accordance with the requirements of 50 CFR § 260.98 to 260.104 and the requirements of good manufacturing practice contained in 21 CFR Part 110.

TABLE 1

Physical defects		Categories		
Types	Degrees	Minor	Major	Serious
Frozen State:				
Deteriorative color	Slight	101		
	Moderate		201	
	Excessive			301
Dehydration	Slight	102		
	Moderate		202	
	Excessive	24	63	302
Uniformity of size	Slight	103		
	Moderate		203	15
	Excessive			303
Uniformity of weight	Slight	104		
	Excessive			304
Unacceptable angles	Slight	105		
	Moderate		205	
	Excessive			305
Improper fill	Slight	106		
	Excessive			306
Thawed State:				
Blemishes	Slight	107		
	Moderate		207	
	Excessive			307
Bones	Slight	108		
	Moderate	208		
	Excessive			308
Cooked State: Texture	Slight	109		
	Moderate		209	
	Excessive			309

NOTE: The code numbers shown in the above Table are for identification of defects for recording purposes only. They are keyed to the nature and severity of the defect. They are not scores.

§ 264.157 Appendix 1. Definition and method of measuring color classifications.

Section 264.157 Appendix 1. Definition and procedure of measuring color classifications cited in § 264.152(b). This appendix is intended for laboratory use to classify color when a field procedure is questioned.

Introduction. The procedure described below is to be followed when a photoelectric or visual reflectometer is used. The light source and filters for a photoelectric or visual reflectometer are designed to view a sample primarily in the red region of the spectrum, at or near 640 nanometers. The geometry of its illumination and observation conditions provide directions approximately 45 degrees and 0 degrees from a common perpendicular. The viewing area is, preferably, approximately six square inches or 39 square centimeters. Reflectometers having much smaller viewing areas may be used if enough measurements are made on different areas of the sample to describe its average reflectance accurately. The receptor characteristics provide reflectance measurements that are accurate to within 1 percent of full-scale reading using Munsell neutral value standards as described below.

This description of a reflectometer is intended to avoid undue restrictions to equipment provided by one, or a very few, manufacturers. In the majority of situations, a variety of reflectometers will be suitable for color classification of samples from minced fish blocks. In the event of a borderline sample whose color classification is disputed, the sample is measured again using a different, more accurate, reflectometer. For example, if a visual reflectometer had been used to classify a disputed sample, a more accurate photoelectric reflectometer should be used for the remeasurement.

Sample preparation. The color of the sample must represent the average color of the block when it is cut from that block. At least one of its sides must be large enough and flat enough to completely cover the reflectometer's viewing area. The sample must be cooked from the frozen state by the bake procedure or, if previously coated with batter and breading, by the deep fat frying procedure, 18.B01 in "Official Methods of Analysis" 2nd supplement to the 12th edition, of the Association of Official Analytical Chemists. If the sample is covered with batter and breading for cooking, this cover should be removed with a sharp serrated knife so that the viewing area surface remains flat. The cooked sample must also be thick enough to prevent transmission of external, ambient light into the viewing area of the reflectometer.

Measurement of color. The reflectometer itself is described above at "Introduction." It may be calibrated and used with neutral value standards furnished by the manufacturer of a reflectometer or with Munsell matte-finish neutral value standards. When other standards are used, they must have been calibrated against Munsell matte-finish neutral value standards using the same reflectometer. All standards must be large enough and thick enough to cover the reflectometer's viewing area and prevent transmission of external ambient light into this viewing area.

Munsell neutral value standards are based on the Munsell notation system as defined in terms of the CIE (International Commission on Illumination) standard observer and coordinate system for color specification. Chip or swatch samples of Munsell standards may be obtained from Munsell Color, Inc., Baltimore, Md. 21218, or made as given by the relationship between Munsell value and luminous reflectance derived by a subcommittee of the Optical Society of America and Published in the "Journal of the Optical Society of America," volume 33, page 406 (1943). This relationship is based on the equivalence in luminous reflectance of light of 555 nanometer wave length to a given percent of the luminous reflectance of magnesium oxide. For the Munsell values used in this section, this relationship has been extracted from page 406 of this reference and is given in the following table, where "N" is the Munsell value and "Yv" is the equivalent luminous reflectance of the stated percent of magnesium oxide:

N	Yv
N2.00	3.13
N6.00	30.05
N6.25	33.04
N6.50	36.20
N7.00	43.06
N7.25	46.77
N7.50	50.68
N9.00	78.66

Definition of "white" samples. Calibrate the reflectometer to 0-percent reflectance using a N2.0 standard, then to 90 percent using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "white" blocks have a relative reflectance greater than a N7.25 standard; but if a particular sample has a relative reflectance between N7.0 and N7.5 standards, its reflectance is measured again using an expanded scale before defining it as "white." Recalibrate the reflectometer using a N7.0 standard to set 0-percent reflectance and a N7.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "white" sample is defined as having a greater relative reflectance than a N7.25 standard.

Definition of "dark" samples. Calibrate the reflectometer to a 0-percent reflectance using a N2.0 standard, then to 90 percent reflectance using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "dark" blocks have a relative reflectance less than a N6.25 standard; but if a particular sample has a relative reflectance between N6.0 and N6.5 standards, its reflectance is measured again using an expanded scale before defining it as "dark." Recalibrate the reflectometer using a N6.0 standard to set 0-percent reflectance and a N6.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "dark" sample is defined as having a lower relative reflectance than a N6.25 standard.

Definition of "light" samples. If a sample does not satisfy the criteria given above for "white" or "dark" samples, it is classified as "light."

Subpart C—United States Standards for Grades of Frozen Raw Fish Portions

§ 264.201 Description of the product.

The product described in this part consists of clean, wholesome, shaped masses of cohering pieces (not ground) of fish flesh. The fish portions are cut from frozen fish blocks, and are packaged in accordance with good manufacturing practice. They are maintained at temperatures necessary for the preservation of the product. All fish portions in an individual package are prepared from the flesh of one species of fish.

§ 264.202 Styles.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless fillets.

(b) *Style II—Skin-on portions.* Portions prepared from fish blocks which have been made from demonstrably acceptable skin-on fillets.

§ 264.203 Types.

(a) *Type I—Uniform shaped.* All portions in the sample are uniformly shaped.

(b) *Type II—Specialty cut.* All portions not covered in Type I.

§ 264.204 Grades.

(a) "U.S. Grade A" is the quality of frozen raw fish portions that: (1) Possess a good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw fish portions that: (1) Possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" or "Utility" is the quality of frozen raw fish portions that meet the requirements of § 264.201 but that otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.205 Labeling requirements for styles of frozen fish portions.

Sections 260.86 (a), (b), and (c) of this chapter states the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 264.202) of frozen raw fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on fillets."

§ 264.211 Determination of the grade.

The grade is determined by examining the product for factors 1-8 in the frozen state and factors 9-11 in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table I. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting after the product has been cooked in accordance with § 264.221(c).

(1) Good flavor and odor (essential requirements for U.S. Grade A product) means that the cooked product has the typical flavor and odor of the indicated species and is free from rancidity, bitterness, staleness, and other off-flavor and odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a U.S.

Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

§ 264.221 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of 10 frozen raw fish portions taken at random from one or more packages as required. The fish portions for examination in the frozen and cooked state are spread out on a flat pan or sheet and are examined according to Table 1. Definition of factors for point deductions are as follows:

(b) *Examination of sample, frozen state.* (1) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(2) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(3) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is determined by using a grid composed of squares ¼ inch × ¼ inch to measure the area of the portion affected. No deductions are made for damage of less than ¼ inch × ¼ inch.

(4) "Voids" refer to objectionable holes, spaces, or depressions in the fish flesh. Instances of voids refer to each occurrence measured by placing a plastic grid marked off in ¼-inch squares at last ⅛ inch in depth over the affected area. Each square is counted as one whether it is full or fractional. No deductions are made for voids of less than ¼ inch × ¼ inch.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
FROZEN STATE		
1 Ease of separation	Minor: Hand separated with difficulty. Each affected	3
	Major: Separated only by knife or other instrument. Each affected	6
2 Broken portion	Break or cut greater than ½ width or length. Each affected	10
3 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated	
	Minor: 1 to 5 instances.[1] Each affected	2
	Major: Over 5 instances. Each affected	4
4 Voids	Holes, spaces, or depressions:	
	Minor: 1 to 5 instances. Each affected	1
	Major: Over 5 instances. Each affected	2
5 Discoloration (overall assessment)	Small degree: Slight yellowing or rusting	16
	Large degree: Excessive yellowing or rusting	31
6 Dehydration (overall assessment)	Surface dehydration:	
	Small degree: Easily scraped off with fingernail. Each affected	5
	Large degree: Deep dehydration not easily scraped off, affecting over 10 percent of surface area. Each affected.	10
7 Uniformity of size	Deviation in length or width between the 2 largest and 2 smallest portions that are similarly shaped.	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
8 Uniformity of weight	Weight ratio of 2 heaviest divided by the 2 lightest.	
	Over 1.0 but not over 1.2	0
	Over 1.2 but not over 1.3	5
	Over 1.3 but not over 1.4	2
	Over 1.4	10
COOKED STATE		
9 Blemishes	Skin (except for Style II) blood spots, bruises and discolorations:	
	Minor: 1 to 6 instances.[1] Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Portions containing bones (potentially harmful). Each affected	10
11 Texture (overall assessment)	Small degree: Moderately dry, soggy, or tough	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery skin (Style II).	15

[1] An instance = each ¼-inch square.

(5) "Discoloration" is considered as a deviation in color from that normal to the species present in the portions.

(6) "Dehydration" refers to the presence of dehydrated (water-removed) tissue in the portions. Slight dehydration is surface dehydration which is not colormasking. Deep dehydration is colormasking and cannot be removed by scraping with a blunt instrument.

(7) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest in the sample. Deductions are not made for overall deviations in length or width up to ¼ inch.

(8) "Uniformity of weight" refers to the degree of uniformity of the weights of portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2 for Type I.

(c) *Examination of sample, cooked state.* Cooked state means the state of the sample after cooking in accordance with instructions accompanying the product. However, if specific instructions are lacking, cooking is accomplished by:

(1) *Boil in bag method.* Insert the sample of frozen portions into a boilable film-type pouch; fold the open end of the pouch over a suspension bar and clamp in place to provide a loose seal after evacuating the air by immersing the pouch into boiling water. Cook the contents for 20 minutes (until the internal temperature of the portions reaches 160° F.).

(2) *Steam method.* Use 10 frozen portions, wrap them individually or in a single layer in aluminum foil, and place the packaged portions on a wire rack suspended over boiling water in a covered container. Steam the packaged portions for 20 minutes.

(3) *Bake method.* Package the 10 frozen portions as previously described. Place the packaged portions on a flat cookie sheet or shallow flat-bottom pan of sufficient size so that the packages can be evenly spread on the sheet or pan. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F. for 20 minutes.

(d) *Factors examined in cooked state.* (1) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid market off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(2) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(3) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness, mushiness, toughness, and rubberiness. Texture defects of the cooked skin in Style II are mushiness, rubberiness, toughness, and stringiness.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight": The net weight of the portions if glazed shall be determined by the following method:

(i) Weigh the portions with the glaze intact, which gives the gross weight.

(ii) Thaw the glaze from the surfaces of the product with flowing tap water.

(iii) Gently wipe off the excess water from the surfaces with a single water saturated paper towel.

(iv) Weigh the deglazed portions, which gives the net weight.

§ 264.225 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

Subpart D—United States Standards for Grades of Frozen Raw Breaded Fish Sticks

§ 264.251 Description of the product.

Frozen raw breaded sticks are clean, wholesome, rectangular-shaped unglazed masses of cohering pieces (not ground) of fish flesh coated with breading. The sticks are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; are packaged, and frozen in accordance with good commercial practice. They are maintained at temperatures necessary for preservation of the product. Frozen raw breaded fish sticks weigh up to and including 1½ ounces; are at least ⅜ inch thick; and their largest dimension is at least 3 times the next largest dimension. All sticks in an individual package are prepared from the flesh of one species of fish.

§ 264.252 Composition of the product.

(a) Frozen raw breaded fish sticks shall contain 72 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.271(f). Fish flesh content may be determined by the on-line method as set forth in § 264.271(g): *Provided*, That the results are consistent with the fish flesh content requirement of 60 percent by weight when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.253 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded fish sticks that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen raw breaded fish sticks that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw breaded sticks that meet the requirements of § 264.251 *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.261 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling, and tasting, after the product has been cooked in accordance with § 264.271(c).

(1) Good flavor and order (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor

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but is free from objectionable off-flavors and off-odors of any kind.

§ 264.271 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen raw breaded fish sticks taken at random from one or more packages as required. The fish sticks are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS

[See footnotes at end of table.]

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Moderate loose breading and/or moderate frost	2
	Large degree: Excessive loose breading and/or excessive amount frost	5
2 Ease of separation	Minor: Hand separated with difficulty. Each affected	1
	Major: Separated only by knife or other instrument. Each affected	2
3 Broken stick	Break or cut greater than ½ length width. Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or mutilated [1]	
4 Damaged stick	Minor: 1 to 3 instances. Each affected	2
	Major: Over 3 instances. Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest sticks is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest sticks:	
	Over 1.0; not over 1.15	0
	Over 1.15; not over 1.3	2
	Over 1.3; not over 1.4	5
	Over 1.4	10
	COOKED STATE	
7 Distortion	Minor: Bending, shrinking, twisting (¼ to ½ inch). Each affected	1
	Major: Excessive bending, shrinking, twisting (over ½ inch). Each affected.	2
	Bare spots, blistering, ridges, breaks, curds	
8 Coating defects	Minor: 1 to 3 instances. Each affected	1
	Major: Over 3 instances. Each affected	2
	Skin, blood spots, bruises, discolorations [1]	
9 Blemishes	Minor: 1 to 6 instances. Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Sticks containing bones (potentially harmful). Each affected	10
Texture		
11 Coating	Small degree: Moderately dry, soggy, doughy or tough	5
	Large degree: Farinaceous (mealy), pasty, very tough	15
12 Fish flesh	Small degree: Moderatley dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy tough or rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating sticks from each other or from packaging material that are frozen together during the freezing.

(3) "Broken stick" means a stick with a break or cut equal to or greater than one-half the width of the stick.

(4) "Damaged stick" means a stick that has been mashed, physically or mechanically injured, misshaped, or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by

using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the stick affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen sticks. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the sticks. Uniformity is measured by the combined weight of the two heaviest sticks divided by the combined weight of the two lightest sticks. No deductions are made for weight ratios less than 1.15.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, into a wire mesh fry basket large enough to hold the fish sticks in a single layer and cook by immersing 2-3 minutes in 375° F. liquid or hydrogenated cooking oil. After cooking, allow the fish sticks to drain 15 seconds and place the fish sticks on a paper napkin or towel to absorb excess oil.

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the stick. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters, or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visable. Lumps are objectionable outcroppings of breading on the stick surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as 1 whether it is full or fractional.

(3) "Blemishes" refers to skin, blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of blemishes refer to each occurrence measured by placing a plastic grid market off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(4) "Bones" means the presence of potentially harmful bones in a stick. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(5) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastiness as sensed by starchiness or other sticky properties felt by mouth tissues and/or mealiness.

(6) "Texture defects of the fish flesh" refers to the absence of the normal textural properties of the cooked fish flesh which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, mushiness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects

the appearance and/or utility of the product.

(f) "Minimum fish flesh content—End-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen raw breaded fish sticks (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen raw breaded fish sticks by dividing the declared net weight on the label by the number of fish sticks indicated on the label to obtain the weight of an individual fish stick and multiply by three. If the number of fish sticks contained in the package is not declared on the label, the actual weight of three frozen raw breaded fish sticks shall be used.

(ii) Using tongs, place each stick individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for sticks held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish stick from the water and blot the stick lightly with double thickness paper toweling. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the stick on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some sticks prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" stick in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish sticks.

(vii) Calculate the percent of fish flesh in the sample unit by the following formula:

Percent fish flesh = Weight of fish flesh (vi)/Weight of three raw breaded fish sticks (i) × 100

Example. The declared net weight of five 1 oz. breaded fish sticks would be 5 ounces. The average weight of three groups of five unbreaded fish sticks would be 3.6 ounces. The percent fish flesh would be 72.

Percent fish flesh = Weight of fish flesh (sample unit) (i) × 100/Declared net weight of raw brealded fish sticks × 5(ii)

(g) "Minimum fish flesh content—Online determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish sticks (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—Balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded fish sticks from the line. These weights should be recorded and averaged (average weight of three groups of five sticks) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish sticks and the declared net weight of five breaded fish sticks.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 times (three groups of five unbreaded fish sticks). For larger production runs or lots, a minimum of 1 determination i.e., 1 times (three groups of five unbreaded fish sticks), shall be carried out for every hour of production of product units of the same weight.

§ 264.272 Use of alternate methods of fish flesh determination.

(a) The end-product method in § 264.271(f) for determining fish flesh content shall be used for lot and appeal inspections and may be used for verification inspection.

(b) The on-line method in § 264.271(g) for determining fish flesh content may be used during processing operations.

§ 264.275 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart E—United States Standards for Grades of Frozen Raw Breaded Fish Portions

§ 264.301 Description of the product.

Frozen raw breaded portions are clean, wholesome, uniformly shaped, unglazed masses of cohering pieces (not ground) of fish flesh coated with breading. The portions are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; and are packaged and frozen in accordance with good commercial practice. They are maintained at temperatures necessary for the preservation of the product. Frozen raw breaded fish portions weigh more than 1½ ounces, and are at least ⅜-inch thick. Frozen raw breaded fish portions contain not less than 75 percent, by weight, of fish flesh. All portions in an individual package are prepared from the flesh of one species of fish.

§ 264.302 Styles.

(a) *Style I—Skinless portions.* Portions prepared from fish blocks which have been made with skinless fillets.

(b) *Style II—Skin-on-portions.* Portions prepared from fish blocks which have been made with demonstrably acceptable skin-on fillets.

§ 264.303 Composition of the product.

(a) Frozen raw breaded fish portions shall contain 75 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.321(f). Fish flesh content may be determined by the on-line method as set forth in § 264.321(g): *Provided,* That the results are consistent with the fish flesh content requirement of 75 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.304 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded fish portions that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(b) "U.S. Grade B" is the quality of frozen raw breaded fish portions that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw breaded portions that meet the requirements of § 264.301, *Description of product,* but otherwise fail to meet the requirements of "U.S. Grade B".

§ 264.305 Labeling requirements for styles of frozen raw breaded fish portions.

Section 260.86 (a), (b), and (c) of Part 260 states the requirements for the use of approved grade marks, inspection marks and combined grade and inspection marks on processed fishery products. When an approved inspection mark is used on Style II (§ 264.302) of frozen raw breaded fish portions, that style shall be conspicuously revealed on the label as having been made from "skin-on-fillets".

§ 264.311 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated in accordance with the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total points deducted is substracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting, after the product has been cooked in accordance with § 264.321(c).

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 264.321 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen raw breaded fish portions taken at random from one or more packages as required. The fish portions are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Moderate loose breading and/or moderate frost	3
	Large degree: Excessive loose breading and/or excessive amount frost	6
2 Ease of separation	Minor: Hand separated with difficulty. Each affected	1
	Major: Separated only by knife or other instrument. Each affected	2
3 Broken portion	Break or cut greater than ½ width or length. Each affected	10
4 Damaged portion	Mashed, mechanically and/or physically injured, misshaped or mutilated:[1]	
	Minor: 1 to 5 instances. Each affected	2
	Major: Over 5 instances. Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest portion is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest portions:	
	Over 1.2 but not over 1.3	0
	Over 1.3 but not over 1.4	2
	Over 1.4	10
	COOKED STATE	
7 Distortion	Minor: Bending, shrinking, testing—¼ to ½ inch. Each affected	1
	Major: Excessive bending, shrinking, twisting—over ½ inch. Each affected.	2
8 Coating defects	Bare spots, blistering, ridges, breaks, curds:[1]	
	Minor: 1 to 6 instances. Each affected	1
	Major: Over 6 instances. Each affected	2
9 Blemishes	Skin (except for style II), blood spots, bruises, and discolorations:[1]	
	Minor: 1 to 6 instances. Each affected	2
	Major: Over 6 instances. Each affected	4
10 Bones	Portions containing bones (potentially harmful). Each affected	10
Texture		
11 Coating	Small degree: Moderately dry, soggy, doughy, or tough	5

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS—Continued

Factors scored	Method of determining score	Deduct
	Large degree: Farinaceous (mealy), pasty, very tough	15
12 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, or rubbery (skin for style II).	15

[1] An instance = each ¹⁄₁₆ square inch (¼-inch square).

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating the portions from each other or from the packaging material.

(3) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(4) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped, or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼-inch x ¼-inch (that is, squares with an area of ¹⁄₁₆ square inch each) to measure the area of the portion affected. No deductions are made for damage of less than ¹⁄₁₆ square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest portions in the sample. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to, the degree of uniformity of the weights of the portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions in the sample. No deductions are made for weight ratios less than 1.2.

(c) (1) Cooked state means the state of the product after being cooked in accordance with the instructions accompanying the product. If, however, specific instructions are lacking, the product being inspected is cooked as follows:

(2) Transfer the product, while still frozen, into a wire mesh fry basket large enough to hold the fish portions in a single layer and cook by immersing them 3-5 minutes in liquid or hydrogenated cooking oil heated to 350° to 375° F. After cooking, allow the fish portions to drain 15 seconds and place them on a paper napkin or towel to absorb excess oil.

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the portion. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the portion surface. Ridges are projections of excess breading at the edges of the portions. Depressions are objectionable visible voids or shallow areas that are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated white or creamy albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (¹⁄₁₆ square inch). Each square is counted as 1 whether it is full or fractional.

(3) "Blemishes" refers to skin (except for Style II), blood spots or bruises, objectionable dark fatty flesh, or extraneous material. Instances of

blemishes refers to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(4) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(5) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Defects in coating texture are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues and/or mealiness.

(6) "Texture defects of the fish flesh and texture of skin in Style II" refers to the absence of the normal textural properties of the cooked fish flesh and to the absence of tenderness of the cooked skin in Style II. Normal textural properties of cooked fish flesh are tenderness, firmness, and moistness without excess water. Texture defects of the cooked flesh are dryness, mushiness, toughness, and rubberyness. Texture defects of the cooked skin in Style II are mushiness, rubberyness, toughness, and stringiness.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—End-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen raw breaded portions (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3 to 4 liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen raw breaded portions by dividing the declared net weight on the label by the number of portions indicated on the label to obtain the weight of an individual portion and multiply by three. If the number of portions contains in the package is not declared on the label, the actual weight of three frozen raw breaded portions shall be used.

(ii) Using tongs, place each portion individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for portions held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish portion from the water and blot the stick lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the portion on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some portions prepared using batters that are difficult to remove after one dipping. When this occurs, redip the partially "debreaded" portion in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish portions.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

Percent fish flesh = Weight of fish flesh (vi)/Weight of three raw breaded portions (i) × 100

(g) "Minimum fish flesh content—On-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five portions (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—Balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded portions from the line. These weights should be recorded and averaged (average weight of three groups of five portions) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded portions and the declared net weight of five finished product units.

Example. The declared net weight of five 4 oz. finished product units would be 20 ounces or 565 grams. The average weight of three groups of five unbreaded portions would be 13 ounces or 424 grams. The percent fish flesh would be 75.

Percent fish flesh = Weight of fish flesh (sample unit (i))/Declared net weight of raw breaded portions × 5(ii) × 100

(iii) Frequency of on-line fish flesh content determination shall be minimum of three determinations of fish flesh content for small production runs or lots, i.e., 3 × (three groups of five unbreaded portions). For larger production runs or lots, a minimum of one determination i.e., 1 × (three groups of five unbreaded portions), shall be made for every hour of production of product units of the same weight.

§ 264.322 Use of alternate methods of fish flesh determination.

(a) The end-product method in § 264.321(f) for determining fish flesh content shall be used for lot and appeal inspections and may be used for verification inspection.

(b) The on-line method in § 264.321(g) for determining fish flesh content may be used during processing operations.

§ 264.325 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260. Subpart A of this chapter (Regulations Governing Processed Fishery Products), except that a sample unit shall consist of 10 portions taken at random from one or more packages as required.

Subpart F—United States Standards for Grades of Frozen Fried Fish Sticks

§ 264.351 Description of the product.

Frozen fried fish sticks are clean wholesome, rectangular-shaped unglazed masses of cohering pieces (not ground) of fish flesh coated with breading and partially cooked. The sticks are cut from frozen fish blocks; are coated with a suitable, wholesome batter and breading; are fried, packaged, and frozen in accordance with good manufacturing practices. They are maintained at temperatures necessary for preservation of the product. Frozen fried fish sticks weigh up to and including 1½ ounces; are at least three-eighths of an inch thick; and their largest dimension is at least three times the next largest dimension. All sticks in an individual package are prepared from the flesh of one species of fish.

§ 264.352 Composition of the product.

(a) Frozen fried fish sticks shall contain 60 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.371(f). Fish flesh content may be determined by the on-line method as set forth in § 264.371(g): *Provided,* That the results are consistent with the fish flesh content requirement of 60 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.353 Grades.

(a) "U.S. Grade A" is the quality of frozen fried fish sticks that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen fried fish sticks that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen fried fish sticks that meet the requirements of § 264.351 *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.361 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling, and tasting, after the product has been cooked in accordance with § 264.371.

(1) Good flavor and odor (essential requirements for a Grade A Product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B Product) means that the cooked product is lacking in good flavor and odor but is free from objectable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Loose free oil, and/or moderate loose breeding and/or moderate frost.	2
	Large degree: Oil soaking through package and/or excessive loose breading and/or excessive amount frost.	5
2 Ease of seperation	Minor: Hand seperated with difficulty.—Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken stick	Break or cut greater than ½ length or width.—Each affected	10
	Mashed, mechanically and/or physically injured, misshaped or mutilated[1]	
4 Damaged stick	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest sticks is:.	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest sticks:	
	Over 1.0; not over 1.15	0
	Over 1.15; not over 1.3	2
	Over 1.3; not over 1.4	5
	Over 1.4	10
	COOKED STATE	
7 Distortion	Minor: Bending, shrinking, twisting (¼ to ½ inch).—Each affected	1

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 STICKS—Continued

Factors scored	Method of determining score	Deduct
	Major: Excessive bending, shrinking, twisting (over ½ inch).—Each affected.	2
8 Color	Minor: Sticks differing slightly from average color of sticks in sample unit.—Each affected.	2
	Major: Sticks excessively dark or light from average color of sticks in sample unit.—Each affected.	4
	Bare spots, blistering, ridges, breaks, curds [1]	
9 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	3
	Skin, blood spots, bruises, discolorations [1]	
10 Blemishes	Minor: 1 to 6 instances.—Each affected	1
	Major: Over 6 instances.—Each affected	3
11 Bones	Sticks containing bones (potentially harmful).—Each affected	10
Texture		
12 Coating	Small degree: Moderately dry, soggy, doughy, oily, and tough	5
	Large degree: Farinaceous (mealy), pasty, very tough and/or oily	15
13 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, and rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

§ 264.371 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen fried fish sticks taken at random from one or more packages as required. The fish sticks are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of free excess oil and/or loose breading and/or loose frost.

(2) "Ease of separation" refers to the difficulty of separating sticks from each other or from packaging material that are frozen together after the frying operation and during the freezing.

(3) "Broken stick" means a stick with a break or cut equal to or greater than one-half the width of the stick.

(4) "Damaged stick" means a stick that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the stick affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen sticks. Deviations are measured from the combined lengths of the two longest minus the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length of width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the sticks. Uniformity is measured by the combined weight of the two heaviest sticks divided by the combined weight of the two lightest sticks. No deductions are made for weight ratios less than 1.15.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, onto a flat pan or sheet of sufficient size to accommodate 10 sticks spaced at least ¼ inch apart. Place the pan and frozen contents in a properly ventilated oven preheated to 400° F. until thoroughly cooked (about 15 to 18 minutes or to an internal temperature of 160° F.).

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the stick. Distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Color" refers to the reasonably uniform color typical of the sample material.

(3) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the stick surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filled with coagulated albumin. Instances of these defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as one whether it is full or fractional.

(4) "Blemishes" refers to skin, blood spots, or bruises, objectional dark fatty flesh, carbon specks or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off in ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as one whether it is full or fractional.

(5) "Bones" means the presence of potentially harmful bones in a stick. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(6) "Texture defects of the coating" refers to the absence of the normal textural properties of the coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues; oiliness to the degree of impairment of texture; and/or mealiness.

(7) "Texture defects of the fish flesh" refers to the absence of normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, softness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—end-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen fried fish sticks (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen fried fish sticks by dividing the declared net weight on the label by the number of fish sticks indicated on the label to obtain the weight of an individual fish stick and multiply by three. If the number of fish sticks contained in the package is not declared on the label, the actual weight of three frozen fried fish sticks shall be used:

(ii) Using tongs, place each stick individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 to 110 seconds for sticks held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish stick from the water and blot the stick lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the stick on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some sticks prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" stick in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish sticks.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

% fish flesh = Weight of fish flesh (vi)/ Weight of three fried fish sticks (i) × 100

(g) "Minimum fish flesh content—on-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish sticks (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—balance accurate to 0.1 gram.

(2) Procedure:

(i) Weigh three groups of five raw unbreaded fish sticks from the line. These weights should be recorded and averaged (averge weight of three groups of five sticks) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish sticks and the declared net weight of five fried fish sticks. The declared net weight of five fried fish sticks is obtained by dividing the net weight declaration on the label by the number of fish sticks declared on the label and multiplying by 5. If the number of fish sticks is not declared on the label, the actual weight of five fried fish sticks shall be used.

% fish flesh = Weight of fish flesh (sample unit (i))/Declared or actual net weight of five fried fish sticks × 100

NOTE: The percent fish flesh determined by the on-line method will usually differ from the percent fish flesh determined by the end-product method due to processing and variations associated therewith.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 x (three groups of five unbreaded fish sticks). For larger productions runs or lots, a minimum of one determination, i.e., 1 x (three groups of five unbreaded fish sticks) shall be carried out for every hour of production of product units of the same weight.

§ 264.372 Use of alternate methods for determinations fish flesh content.

(a) The official end-product method in § 264.371(f) for determining fish flesh content shall be used for lot and appeal inspections, and for inspections for verification in official establishments when the on-line method is used.

(b) The on-line method in § 264.371(g) for determining fish flesh content may be used in official establishments during processing operations.

§ 264.375 Tolerances for certification of officially drawn samples.

The sample rate and grade of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

Subpart G—United States Standards for Grades of Frozen Fried Fish Portions

§ 264.401 Description of the product.

Frozen fried fish portions are clean, wholesome, uniformly shaped, unglazed masses of cohering pieces (not ground) of fish flesh coated with breading and partially cooked. The portions are cut from frozen fish blocks; coated with a suitable, wholesome batter and breading, are fried, packaged, and frozen in accordance with good manufacturing practices. They are maintained at temperatures necessary for preservation of the product. Frozen fried fish portions weigh more than 1½ ounces and are at least three-eights of an inch thick. All portions in an individual package are prepared from the flesh of one species of fish.

§ 264.402 Composition of the product.

(a) Frozen fried fish portions shall contain 65 percent by weight of fish flesh determined by the official end-product method as set forth in § 264.421(f). Fish flesh content may be determined by the on-line method as set forth in § 264.421(g): *Provided*, That the results are consistent with the fish flesh content requirement of 65 percent by weight, when verified by the official end-product method.

(b) Production methods employed in official establishments shall be kept relatively constant for each production lot so as to minimize variation in any factors which may affect the relative fish flesh content.

§ 264.403 Grades.

(a) "U.S. Grade A" is the quality of frozen fried fish portions that: (1) Possess good flavor and odor and (2) rate a total score of not less than 85 points for those factors of quality that are rated in accordance with the scoring system outlined elsewhere in this part.

(b) "U.S. Grade B" is the quality of frozen fried fish portions that: (1) Possess at least reasonably good flavor and odor and (2) rate a total score of not less than 70 points for those factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen fried fish portions that meet the requirements of § 264.401 *Description of product*, but otherwise fail to meet the requirements of "U.S. Grade B."

§ 264.411 Determination of the grade.

The grade is determined by examining the product in the frozen and cooked states and is evaluated by considering the following factors:

(a) *Factors rated by score points.* Points are deducted for variations in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100; the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "flavor and odor" is evaluated organoleptically by smelling and tasting, after the product has been cooked in accordance with § 264.421.

(1) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the typical flavor and odor of the indicated species of fish and of the breading and is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS

[See footnote at end of table.]

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Condition of package	Small degree: Loose free oil, and/or moderate loose breading and/or moderate frost.	3
	Large degree: Oil soaking through package and/or excessive loose breading and/or excessive amount frost.	6
2 Ease of seperation	Minor: Hand seperated with difficulty —Each affected	1
	Major: Separated only by knife or other instrument.—Each affected	2
3 Broken portion	Break or cut greater than ½ length or width.—Each affected	10

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE UNIT OF 10 PORTIONS—Continued

[See footnote at end of table.]

Factors scored	Method of determining score	Deduct
	Mashed, mechanically and/or physically injured, misshaped or mutilated [1]	
4 Damaged portion	Minor: 1 to 3 instances.—Each affected	2
	Major: Over 3 instances.—Each affected	4
Uniformity		
5 Size	Deviation in length or width between the 2 largest and 2 smallest portions is:	
	Up to ¼ inch	0
	Over ¼ inch and up to ½ inch	3
	Over ½ inch	10
6 Weight	Weight ratio of the 2 heaviest divided by the 2 lightest portions:	
	Over 1.0; not over 1.20	0
	Over 1.20; not over 1.3	3
	Over 1.3; not over 1.4	6
	Over 1.4	10
	COOKED STATE	
7 Distortion	Major: Bending, shrinking, twisting (¼ to ½ inch).—Each affected	1
	Minor: Excessive bending, shrinking, twisting (over ½ inch).—Each affected.	2
8 Color	Minor: Portions differing slightly from average color of portions in sample unit.—Each affected.	2
	Major: Portions excessively darker or lighter from average color of portions in sample unit.—Each affected.	4
	Bare spots, blistering, ridges, breaks, curds [1]	
9 Coating defects	Minor: 1 to 3 instances.—Each affected	1
	Major: Over 3 instances.—Each affected	3
	Skin, blood spots, bruises, discolorations [1]	
10 Blemishes	Minor: 1 to 6 instances.—Each affected	1
	Major: Over 6 instances.—Each affected	3
11 Bones	Portions containing bones (potentially harmful).—Each affected	10
Texture		
12 Coating	Small degree: Moderately dry, soggy, doughy, oily and/or tough	5
	Large degree: farinaceous (mealy), pasty, very tough and/or oily	10
13 Fish flesh	Small degree: Moderately dry, soft, mushy	5
	Large degree: Dry to the point of fibrousness, very mushy, tough, and/or rubbery.	15

[1] An instance = each 1/16 square inch (¼-inch square).

§ 264.421 Definitions.

(a) Selection of the sample unit: The sample unit shall consist of 10 frozen fried fish portions taken at random from one or more packages as required. The portions are spread out on a flat pan or sheet and are examined according to Table 1. Definitions of factors for point deductions are as follows:

(b) Examination of sample, frozen state: (1) "Condition of package" refers to the presence in the package of free excess oil and/or loose breading and/or loose frost.

(2) "Ease" of separation refers to the difficulty of separating portions from each other or from packaging material that are frozen together after the frying operation and during the freezing.

(3) "Broken portion" means a portion with a break or cut equal to or greater than one-half the width or length of the portion.

(4) "Damaged portion" means a portion that has been mashed, physically or mechanically injured, misshaped or mutilated to the extent that its appearance is materially affected. The amount of damage is measured by using a grid composed of squares ¼ inch (that is, squares with an area of 1/16 square inch each) to measure the area of the portion affected. Deductions are not made for damage less than 1/16 square inch.

(5) "Uniformity of size" refers to the degree of uniformity in length and width of the frozen portions. Deviations are measured from the combined lengths of the two longest minus

the combined lengths of the two shortest and/or the combined widths of the two widest minus the combined widths of the two narrowest. Deductions are not made for overall deviations in length or width up to ¼ inch.

(6) "Uniformity of weight" refers to the degree of uniformity of the weights of the portions. Uniformity is measured by the combined weight of the two heaviest portions divided by the combined weight of the two lightest portions. No deductions are made for weight ratios less than 1.20.

(c) Cooked state means the state of the product after cooking in accordance with the instructions accompanying the product. However, if specific instructions are lacking, the product for inspection is cooked as follows: Transfer the product, while still in frozen state, onto a flat pan or sheet of sufficient size to accommodate 10 portions spaced at least ¼ inch apart. Place the pan and frozen contents in a properly ventilated oven preheated to 420° F. until thoroughly cooked (about 15 to 18 minutes or to an internal temperature of 160° F.).

(d) Examination of sample, cooked state: (1) "Distortion" refers to the degree of bending of the long axis of the portions. distortion is measured as the greatest deviation from the long axis. Deductions are not made for deviations of less than ¼ inch.

(2) "Color" refers to the reasonably uniform color within the sample unit.

(3) "Coating defects" refers to breaks, lumps, ridges, depressions, blisters or swells and curds in the coating of the cooked product. Breaks in the coating are objectionable bare spots through which the fish flesh is plainly visible. Lumps are objectionable outcroppings of breading on the portion surface. Ridges are projections of excess breading at the edges of the fish flesh. Depressions are objectionable visible voids or shallow areas which are lightly covered by breading. Blisters are measured by the swelling or exposed area in the coating resulting from the bursting or breaking of the coating. Curd refers to crater-like holes in the breading filed with coagulated albumin Instances of those defects are measured by a plastic grid marked off in ¼-inch squares (1/16 square inch). Each square is counted as 1 whether it is full or fractional.

(4) "Blemishes" refers to skin, blood spots or bruises, objectionable dark fatty flesh, carbon specks or extraneous material. Instances of blemishes refers to each occurrence measured by placing a plastic grid marked off ¼-inch squares (1/16 square inch) over the defect area. Each square is counted as 1 whether it is full or fractional.

(5) "Bones" means the presence of potentially harmful bones in a portion. A potentially harmful bone is one that after being cooked is capable of piercing or hurting the palate.

(6) "Texture defects of the coating" refers to the absence of the normal textural properties of the cooked coating which are crispness and tenderness. Coating texture defects are dryness, sogginess, mushiness, doughyness, toughness, pastyness, as sensed by starchiness or other sticky properties felt by mouth tissues; oiliness to the degree of impairment of texture; and/or mealiness.

(7) "Texture defects of the fish flesh" refers to the absence of the normal textural properties of the cooked fish flesh, which are tenderness, firmness, and moistness without excess water. Texture defects of the flesh are dryness, mushiness, toughness, and rubberyness.

(e) General definitions: (1) "Small" (overall assessment) refers to a condition that is noticeable but is not seriously objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but also is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(f) "Minimum fish flesh content—end-product determination" refers to the minimum percent, by weight, of the average fish flesh content of three frozen fried fish portions (sample unit for fish flesh determination), as determined by the following method:

(1) *Equipment needed.* (i) Water bath (for example, a 3- to 4-liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop watch or regular watch readable to a second.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(vii) Nut pick.

(viii) Thermometer (immersion type) accurate to ±2° F.

(2) *Procedure.* (i) Calculate the weight of three frozen fried fish portions by dividing the declared net weight on the label by the number of fish portions indicated on the label to obtain the weight of an individual fish portion and multiply by three. If the number of fish portions contained in the package is not declared on the label, the actual weight of three frozen fried fish portions shall be used.

(ii) Using tongs, place each portion individually in the water bath maintained at 63° F. to 120° F. and allow to remain until the breading becomes soft and can easily be removed from the still frozen fish flesh (between 10 and 110 seconds for portions held in storage at 0° F.).

(iii) At the end of the immersion, remove the fish portion from the water and blot the portion lightly with double thickness paper towelings. This step should be completed in no more than 7 seconds.

(iv) Scrape and remove the breading material and batter from the fish flesh with the spatula removing the softened breading material and batter from the narrow sides and ends of the portion on the initial movements, followed by removing the material from the wider flat surfaces.

(v) Residual batter and breading may remain on some portions prepared using batters that are difficult to remove after one dipping. When this occurs redip the partially "debreaded" portion in 63° to 86° F. (room temperature) water for approximately 2 seconds. Follow step 3 toweling, and remove the softened residual batter and breading material.

(vi) Weigh all the "debreaded" fish portions.

(vii) Calculate the percent fish flesh in the sample unit by the following formula:

% fish flesh=Weight of fish flesh (vi)/Weight of three fried fish portions (i)×100

(g) "Minimum fish flesh content—on-line determination" refers to the minimum percent fish flesh, by weight, of the average weight of three groups of five fish portions (sample unit for fish flesh determination), as determined by the following:

(1) Equipment needed—balance accurate to 0.1 gram.

(2) Procedure: (i) Weigh three groups of five raw unbreaded fish portions from the line. These weights should be recorded and averaged (average weight of three groups of five portions) and percent fish flesh calculated immediately after the average weights are determined.

(ii) Calculate the percent fish flesh in the sample unit by using the average weight of three groups of five unbreaded fish portions and the declared net weight of five fried fish portions. The declared net weight of five fried fish portions is obtained by dividing the net weight declaration on the label by the number of fish portions declared on the label and multiplying by 5. If the number of fish portions is not declared on the label the actual weight of 5 fried fish portions shall be used.

% fish flesh=Weight of fish flesh (vi)/Weight of three fried fish portions (i)×100

NOTE: The percent fish flesh determined by the one-line method will usually differ from the percent fish flesh determined by the end-product method due to processing and variations associated therewith.

(iii) Frequency of on-line fish flesh content determination. A minimum of three determinations of fish flesh content shall be carried out for small production runs or lots, i.e., 3 x (three groups of five unbreaded fish portions). For larger production runs or lots, a minimum of one determination, i.e., 1 x (three groups of five unbreaded fish portions) shall be carried out

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for every hour of production of product units of the same weight.

§ 264.422 Use of alternate methods for determining fish flesh content.

(a) The official end-product method in § 264.421(f) for determining fish flesh content shall be used for lot and appeal inspections, and for inspections for verification in official establishments when the on-line method is used.

(b) The on-line method in § 264.421(g) for determining fish flesh content may be used in official establishments during processing operations.

§ 264.425 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Regulations Governing Processed Fishery Products).

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Subpart A—Uunited States General Standards for Grades of Shrimp

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Subpart A—United States General Standards for Grades of Shrimp

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 47 FR 21841, May 20, 1982, unless otherwise noted.

§ 265.101 Scope and product description.

These standards shall apply to clean, wholesome shrimp of the regular processed commercial species that are fresh or frozen, raw or cooked. Such shrimp are processed and maintained in accordance with good commercial practice at temperatures necessary for the preservation of the product. The provisions of 50 CFR Part 260, "Inspection and Certification" shall apply to this subpart.

§ 265.102 Product forms.

(a) *Types* (1) Fresh.

(2) Frozen individually (IQF) glazed or unglazed.

(3) Frozen solid pack, glazed or unglazed.

(b) *Styles.* (1) Raw (uncoagulated protein).

(2) "Parboiled"—heated for a period of time such that the surface of the product reaches a temperature adequate to coagulate the protein.

(3) "Cooked"—heated for a period of time such that the thermal centre of the shrimp reaches a temperature adequate to coagulate the protein.

(c) *Market forms.* (1) Heads on (head, shell, tail fins on).

(2) Headless (only head removed; shell, tail fins on).

(3) Peeled, round, tail off (all shell and tail fins removed with segments unslit and vein not removed).

(4) Peeled, round, tail on (all shell except last shell segment and tail fins removed, with segment unslit and vein not removed).

(5) Peeled and deveined, round, tail off (all shell and tail fins removed with segments shallowly slit to last segment and vein removed to last segment).

(6) Peeled and deveined, round, tail on (all shell removed except last shell segment, and tail fins, with segments shallowly slit to last segment and vein removed to last segment).

(7) Peeled and deveined, fantail or butterfly tail off (all shell and tail fin removed with segments deeply slit to last segment and vein removed to last segment).

(8) Peeled and deveined, fantail or butterfly, tail on (all shell removed except last shell segment and tail fins, with segments deeply slit to last segment and vein removed to last segment).

(9) Peeled and deveined, western (all shell removed except last shell segment and tail fins, with segments split completely to last segment and vein removed to last segment).

(10) Shell on pieces (head removed, shell and tail fins when existing not removed).

(11) Peeled and deveined, round pieces (all shell removed with segments shallowly slit except last segment when existing; vein removed except last segment when existing).

(12) Peeled and deveined butterfly pieces (all shell removed with segments deeply slit except last segment when existing; vein removed except last segment when existing).

(13) Peeled undeveined pieces (all shell removed).

(14) Other forms of shrimp as specified and so designated on the label.

§ 265.103 Grades.

Each sample unit inspected shall be graded in accordance with the following specifications. Grades shall be assigned to lots in accordance with § 265.104(f).

(a) U.S. Grade A shrimp shall:

(1) Possess good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) Not exceed the tolerance level for defects for U.S. Grade B quality set forth in § 265.104, Table II.

(b) U.S. Grade B shrimp shall:

(1) Possess reasonably good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) Not exceed the tolerance level for defects for U.S. Grade A quality set forth in § 265.104, Table II.

(c) U.S. Grade C shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics ofthe species as defined in § 265.104(d), and

(2) Not exceed the tolerance level for defects for U.S. Grade C quality set forth in § 265.104, Table II.

(d) Substandard shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) Exceed the tolerance level for physical defects for U.S. Grade C quality as set forth in § 265.104, Table II.

(e) *Ungraded shrimp.* Shrimp which do not possess minimum flavor and odor characteristics of the species as defined in § 265.204(d) will not be graded. If any condition constituting a defect action level (as defined in § 265.106, Appendix 2) is found to exist, the product shall be classified as "decomposed" and shall be retained as unfit for human consumption.

§ 265.104 Ascertaining the grade.

The grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Inspection and Certification, Regulations Governing Processed Fishery Products).

(a) *General procedures.* The grade shall be determined by evaluation of fresh shrimp in the fresh and cooked states, and by evaluation of frozen shrimp in the frozen, thawed and cooked states, as appropriate for each evaluation. Shrimp shall be evaluated for odor and flavor in accordance with paragraph (d) of this section. Shrimp shall be evaluated for physical characteristics, defects and uniformity of size in accordance with paragraph (e) of this section. Deviation from normal characteristics, extent of defects, and lack of uniformity are classified as to relative severity as minor, major or serious in accordance with § 265.104, Table I; tolerance levels for the various characteristics and defects are set forth for each grade classification in § 265.104, Table II.

(b) *Sampling.* Lot size, number of sample units and acceptance numbers shall be in accordance with the regulation governing processsed fishery products, 50 CFR 260.61, Table II, V, or VI, whichever is applicable. Unless otherwise specified, the sample unit shall consist of a package or packages sufficient to provide two pounds declared net weight. In evaluation for uniformity of size, the sample unit shall be one entire package.

(c) *Count.* "Count", or number of shrimp per pound, is determined by dividing the number of shrimp in the adjusted sample unit by the adjusted weight in pounds. Shrimp marketed as "pieces" shall not be subject to this evaluation.

(1) "Adjusted weight" means the weight of all of the whole, unbroken, undamaged shrimp in the sample unit. It is determined by deleting the weight of shrimp pieces, broken and damaged shrimp, inadvertently or improperly peeled shrimp, improperly deveined shrimp, and unuseable material (all as defined in § 265.104(e)) from net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(2) "Adjusted sample unit" means the number of shrimp comprising the adjusted weight. If the count so ascertained does not conform with the declared count, the sample unit shall be considered a deviant. A lot shall be considered to be of the declared count if the number of deviant units in the sample does not exceed the acceptance number prescribed for the sample size in Part 260 of this chapter. If the number of deviant units in a lot exceeds the acceptance number for deviant units, it shall be marked as a mixed lot and shall not be graded.

(d) *Evaluation of flavor and odor*—(1) *Procedure.* Sensory evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For raw odor evaluation, frozen shrimp shall be thawed. Fresh or thawed shrimp are broken and the broken flesh is held close to the nose immediately to detect off odor. Cooked style shrimp shall be evaluated for flavor and odor as is, thawed if frozen. For evaluation of flavor and odor fresh or frozen uncooked style shrimp after cooking, use the procedure in Appendix 1, § 265.106 for cooking all samples. Sensory evaluation of cooked samples shall be completed as soon as practical after cooking while the samples are still warm.

(2) *Definitions of flavor and odor.* (i) Good flavor and odor (minimum requirements for Grade "A" shrimp) means that the product has the normal, pleasant flavor and odor characteristic of freshly caught shrimp that is free from off-flavors and odors of any kind. A natural odor or flavor reminiscent of iodoform is acceptable unless excessive.

(ii) Reasonably good flavor and odor (minimum requirements for Grade "B" shrimp) means that the product may be somewhat lacking in good flavor and odor characteristic of freshly caught shrimp but is free from objectionable off-flavors and off-odors of any kind.

Within a sample unit, each shrimp shall be Class 1 as defined in Appendix 2, § 265.106.

(iii) Minimum acceptable flavor and odor (minimum requirements of a Grade "C" or "substandard" product) means that the raw product and the cooked product have a moderate storage-induced odor (for the raw product) and flavor and odor (for the cooked product) but the product is reasonably free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

Reasonably free means that within a sample unit, less than 5 percent of the shrimp may show class 2 decomposition as defined in Appendix 2, § 265.106. None of the shrimp shall show Class 3 decomposition.

(e) *Evaluation of physical characteristics and defects.* Each sample unit shall be evaluated as to physical characteristics and defects in accordance with the following definitions and methods of analysis. If examining frozen shrimp that have been glazed, remove the glaze using Procedure 18.001 of the Association of Official Analytical Chemists immediately before starting the examination. (Appendix 3, § 262.106.)

(1) *Dehydration.* Dehydration refers to a general desiccation of the shrimp flesh that is noticeable after the shell and glaze are removed. It is evaluated by noting any detectable change from the normal characteristic, bright appearance of freshly caught, properly iced or properly processed shrimp.

(i) Slight dehydration means scarcely noticeable desiccation of the shrimp flesh that will not affect the desirability and/or eating quality of the shrimp.

(ii) Moderate dehydration means conspicuous desiccation of the shrimp flesh that will not seriously affect the desirability and/or eating quality of the shrimp.

(iii) Severe dehydration means conspicious desiccation that will seriously affect the desirability and/or eating quality of the shrimp.

(2) Deterioration is evaluated by noting any detectable change in the normal good odor of freshly caught, properly iced or properly processed shrimp.

(i) Slight deterioration means that overall the sample unit lacks the normal characteristic pleasant odor of freshly caught, properly iced or properly processed shrimp; the desirability and/or eating quality of the shrimp is not affected.

(ii) Moderate deterioration means that overall the sample unit has scarcely noticeable odors of prolonged storage and/or off-odors that materially affect the desirability and/or eating quality of the shrimp.

(iii) Severe deterioration means that overall the sample unit has definite odors of prolonged storage and/or spoilage odors that seriously affect the desirability and/or eating quality of the shrimp.

(3) Presence of broken or damaged shrimp. Fresh or thawed shrimp (glaze removed) shall be visually examined. Broken or damaged shrimp, identified as follows, are grouped together and evaluated by noting the percent by weight of such broken or damaged shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Broken" means a shrimp having a break in the flesh greater than ⅓ of the thickness of the shrimp measured where the break occurs.

(ii) "Damaged" means a shrimp that is crushed or mutilated so as to materially affect its appearance and/or useability.

(4) *Presence of shrimp pieces.* (Shrimp marketed as "pieces" will not be subject to this evaluation.) Fresh or thawed shrimp shall be visually examined. "Piece" means:

(i) For a count of 70 or fewer unglazed shrimp per pound, any shrimp that has fewer than 5 segments, with or without tail fins attached; or

(ii) For a count of more than 70 unglazed shrimp per pound, any shrimp that has fewer than 4 segments; or

(iii) Any whole shrimp with a break in the flesh greater than ⅔ of the thickness of the shrimp measured where the break occurs.

Shrimp pieces so identified are grouped together and evaluated by noting the percent by weight of such pieces in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(5) *Presence of unuseable material (legs, flippers, loose shell, antennae, heads, swimmerets, extraneous material and unacceptable shrimp).* The product shall be visually examined in the fresh or thawed state. Unuseable materials, defined as follows, are separated from the shrimp and evaluated by noting the percent by weight of such unuseable material in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Legs" refers to walking legs only (heads-on market form excepted); if attached should be detached and weight thereof evaluated.

(ii) "Loose shell" and "antennae" refer to any piece of shell or antennae which is completely detached from the shrimp.

(iii) "Flipper" refers to the tail fin with or without the last shell segment attached, with or without flesh.

(iv) "Head" refers to any portion of the head (cephalothorax). (Heads-on shrimp excepted).

(v) "Extraneous material" means any material in the sample unit which is not shrimp material.

(vi) "Unacceptable shrimp" refers to abnormal or diseased shrimp.

(6) "Black spot and improperly cleaned ends" refer to presence of any objectionable black or darkened area that affects the desirability and/or eating quality of the shrimp. Affected shrimp are grouped together and evaluated by noting the percent by weight of such shrimp in the total net weight of the sample unit (determined in ac-

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cordance with Appendix 3, § 265.106). Shrimp with black spot and/or improperly cleaned ends shall, if they are considered defective in other categories, also be evaluated in such other categories.

(7) *Presence of inadvertently or improperly peeled, or improperly deveined shrimp.* Fresh or thawed shrimp shall be visually examined to determine whether the particular market form being examined has been properly peeled and/or deveined (i.e. head, shell segments, swimmerets, tail fins, and alimentary canal have been removed) in accordance with the description of that market form as set forth in § 265.102(c). Inadvertently peeled, improperly peeled and improperly deveined shrimp, identified as follows, are grouped together (one class of defect) and evaluated by noting the percent by weight of such shrimp in the total sample unit. (Inadvertently peeled, improperly peeled, or improperly deveined shrimp that are also considered broken, damaged, or pieces, shall be evaluated only as broken, damaged, or pieces, accordingly).

(i) "Inadvertently or improperly peeled" refers to a shrimp with any shell or shell fragments missing or intact other than as outlined under § 265.102(c). (Shell-on shrimp with tail fins and/or telson missing is inadvertently peeled, but if the last segment of flesh is missing, the shrimp is damaged).

(ii) "Improperly deveined" refers to a shrimp with any attached black or dark vein other than as outlined under § 265.102(c).

(8) *Uniformity of size.* The product shall be evaluated in the fresh or thawed state for uniformity of size as follows:

(i) From the adjusted sample unit (all whole, unbroken, undamaged shrimp in the sample unit except that if marketed as "pieces", evaluation shall be of uniformity of size of undamaged pieces) visually select and weigh not more than 10 percent by count, but not less than one of the largest shrimp;

(ii) Visually select and weigh not more than 10 percent by count, but not less than one, of the smallest shrimp;

(iii) Divide the weight of the large shrimp by the weight of the small shrimp and the result will be the uniformity ratio.

(9) *Texture.* "Texture" refers to an undesirable toughness and/or dryness and/or mushiness of shrimp. The product is examined in the cooked state (if uncooked style, cooked in accordance with procedures specified in Appendix 1, § 265.106) and evaluated by noting deviations from the normal characteristics of the species when freshly caught, properly processed, and cooked. The texture of the cooked shrimp should be firm, slightly resilient, but not tough, moist but not mushy. Deviations are classified as:

(i) Slight—Fairly firm, moist, but not mushy.

(ii) Moderate—Moderately tough, moist, but not mushy.

(iii) Severe—Excessively tough, very dry, or very mushy.

(f) *Grade Assignment.* Physical characteristics and defects of each sample unit shall be classified and points assigned in accordance with Table I; the tolerance level for each grade shall be in accordance with Table II. Each sample unit shall be assigned the grade into which it falls in accordance with the evaluation of flavor and odor and tolerance level for characteristics and defects as specified in § 265.103. The grade assigned to a lot is the grade assigned to the majority of the sample units; provided that if:

(1) The number of sample units which fall one grade below the majority grade (by reason of flavor and odor evaluation or physical characteristics and defects) exceeds the acceptance number prescribed for the sample size (number of sample units) as specified in § 260.61; or

(2) The grade of any one of the sample units falls more than one grade below the majority grade in flavor and odor evaluation or by reason of physical characteristics and defects, the grade assigned to the lot shall be one grade below the majority grade.

§ 265.105 Hygiene.

Shrimp shall be processed and maintained in accordance with §§ 260.98 to 260.104 of this chapter and of the

Good Manufacturing Practice regulations contained in 21 CFR Part 110.

TABLE I—CLASSIFICATION OF DEFECTS

Defect	Points Assigned		
	Minor	Major	Serious
1. Dehydration: Slight	1		
Desiccation:			
Moderate		2	
Severe			4
2. Uniformity ratio of weight as defined in § 265.104(e)(8):			
1.75 to 1.99	1		
2.00 to 2.25		2	
Over to 2.25			4
3. Deterioration:			
Slight	1		
Moderate		2	
Severe			4
4. Black spot and improperly cleaned ends:			
From 1% to 4% (by weight)	1		
From 4% to 6% (by weight)		2	
More than 6% (by weight)			4
5. Pieces:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
6. Damaged and broken:			
From 2% to 4% (by weight)	1		
From 4% to 10% (by weight)		2	
More than 10% (by weight)			4
7. Legs, loose shell, antennae, flippers, extraneous material heads, or unacceptable shrimp:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
8. Improperly peeled, inadvertently peeled, and improperly deveined:			
From 1% to 6% (by weight)	1		
From 6% to 10% (by weight)		2	
More than 10% (by weight)			4
9. Texture:			
Slight	1		
Moderate		2	
Severe			4

TABLE II—TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major defects	Serious defects
U.S. Grade A:	
Up to and including 5 points	None.
U.S. Grade B:	
Over 5 points, up to and including 9 points.	None.
U.S. Grade C:	
Over 9 points, up to and including 13 points.	Up to 4 points.

§ 265.106 Appendices.

APPENDIX 1

Procedures for cooking samples in sensory evaluation of cooked flavor and odor.

"Cooked in a suitable manner" (Cooked style excepted) means that a portion of the thawed product has been cooked as follows:

Place 2 to 4 ounces of shrimp in a sauce pan with 1 pint of water and 1 teaspoon of salt. (Salt optional.) Cook until internal temperature reaches 160 degrees F (70 degrees C). Drain and cool without rinsing and check for flavor, odor, and texture.

APPENDIX 2

Defect Action Levels

These defect action levels apply to sample units of fresh or frozen shrimp.

A defect action level occurs if at least one of the following conditions is present:

If 5 percent or more of the shrimp in a sample unit show Class 3 decomposition; or

If 20 percent or more of the shrimp in a sample unit show Class 2 decomposition; or

If the percentage of shrimp showing Class 2 decomposition plus four times the percentage of those showing Class 3 decomposition equals at least 20 percent of the shrimp in a sample unit.

The classes are defined as follows:

Class 1—Passable

This category includes fishery products that range from very fresh to those that contain fishy odors or other odors characteristic of the commercial product, not definitely identifiable as decomposition.

Class 2—Decomposed (Slight but Definite)

The first stage of definitely identifiable decomposition. An odor is present that, while not really intense, is persistent and readily perceptible to the experienced examiner as that of decomposition.

Class 3—Decomposed (Advanced)

The product possesses a strong odor of decomposition which is persistent, distinct and unmistakable.

APPENDIX 3

Determination of Net Weight

Regulatory tolerances for new weight are established under the provisions of the Federal Food Drug and Cosmetic Act, as amended.

The following procedures are based on the Thirteenth Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists.

18.001 Net Weight of Frozen Seafoods—Procedure.

Set scale, 32.050, on firm support and level. Adjust zero load indicator or rest point and check sensitivity.

(a) *Glazed seafoods*—Remove package from low temperature storage, open immediately, and place contents under gentle spray of cold water. Agitate carefully so product is not broken. Spray until all ice glaze that can be seen or felt is removed. Transfer product to circular No. 8 sieve, 20 cm (8″) diameter for product less than or equal to 0.9 kg (2 lb.) and 20 cm (12″) for product greater than 0.9 kg (2 lb.). Without shifting product, incline sieve at angel of 17-20° to facilitate drainage and drain exactly 2 minutes (stop watch). Immediately transfer product to tarred pan (B) and weigh (A). Weight product = A − B.

Modified AOAC 18.016 and 13.017 method for determining the net weight of frozen peeled shrimp blocks and packages.

(a) *Equipment needed.* (i) Container of sufficient size and capacity so as to completely submerge the product. Wire mesh basket large enough to contain contents of package and with opening small enough to retain all pieces. Expanded metal test-tube basket or equivalent, fully line with standard 16 mesh per linear inch insect screen, mesh bags or other suitable containers are also satisfactory.

(ii) Balance. Sensitive to 0.01 ounce or 0.25 g.

(iii) Sieve. U.S. standard #8 wire sieve 12″ diameter (30 centimeters).

(iv) Thermometer.

(v) Stop watch.

(b) *Procedures.* Place contents of individual package in wire mesh basket and immerse in container of fresh water so that top of basket extends above water level. Introduce water at 80°±5°F (26°G2†3°C) at bottom of container at flow rate of 1-3 quarts or liters per minute. As soon as the product thaws so that the glaze can be removed and the shirmp separated easily, transfer all material to 12″ (30 centimeters) No. 8 sieve, distributing evenly. Tilt the sieve to above 20 degrees and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

"Drained weight" of cooked shrimp is determined by the following AOAC 18.018 method modified.

Procedure

(i) Weigh product free of all wrapping and record weight. Place product in a container containing an amount of fresh potable water 80°±5°F (26°G2†3°C) equal to 8 times the declared weight of the product. If product is block frozen, turn block over several times during thawing. If frozen shrimp are caked together they may be parted manually provided they are not injured in the process. When all the ice has melted, empty the shrimp into a 12†† (30 centimeters) 8 sieve, distributing evenly. Tilt the sieve to about 20° and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

Subpart B—United States Standards for Grades of Frozen Raw Breaded Shrimp

AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52776, Sept. 30, 1977, unless otherwise noted.

§ 265.151 Product description.

Frozen raw breaded shrimp are whole, clean, wholesome, headless, peeled shrimp which have been deveined where applicable of the regular commercial species, coated with a wholesome, suitable batter and/or breading. Whole shrimp consist of five or more segments of unmutilated shrimp flesh. They are prepared and frozen in accordance with good manufacturing practice and are maintained at temperatures necessary for the preservation of the product. Individual shrimp and/or pieces consolidated into larger units and covered with breading are not considered for grading under this standard.

§ 265.152 Composition of the product.

(a) Frozen raw breaded shrimp shall contain not less than 50 percent by weight of shrimp material when the weight of the shrimp material is determined by the end product method as set forth in § 265.171(u).

(b) Shrimp material content of raw breaded shrimp may be determined by the on-line method as set forth in § 265.171(v): *Provided*, That the results are at least in compliance with the shrimp material content requirement of 50 percent by weight when verified by the official end product method.

(c) Production methods employed in official establishments shall be kept relatively constant for each product lot so as to minimize variations in any factor which may affect the relative shrimp material content.

§ 265.153 Styles.

(a) *Style I.* "Regular Breaded Shrimp" are frozen raw breaded shrimp containing a minimum of 50 percent of shrimp material.

(b) *Style II.* "Lightly Breaded Shrimp" are frozen raw breaded shrimp containing a minimum of 65 percent of shrimp material.

§ 265.154 Types.

(a) *Type I—Breaded fantail shrimp*—(1) *Subtype A.* Split (butterfly) shrimp with the tail fin and the shell segment immediately adjacent to the tail fin.

(2) *Subtype B.* Split (butterfly) shrimp with the tail fin but free of all shell segments.

(3) *Subtype C.* Split (butterfly) shrimp without attached tail fin or shell segments.

(b) *Type II—Breaded round shrimp*—(1) *Subtype A.* Round shrimp with the tail fin and the shell segment immediately adjacent to the tail fin.

(2) *Subtype B.* Round shrimp with the tail fin but free of all shell segments.

(3) *Subtype C.* Round shrimp without attached tail fin or shell segments.

(c) *Type III—Breaded split shrimp.* [Reserved]

§ 265.155 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded shrimp that when cooked possesses a good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen raw breaded shrimp that when cooked possesses a reasonably good flavor and odor, and that for those factors which are rated in accordance with the scoring system outlined in the following sections the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen raw breaded shrimp that fail to meet the requirements of "U.S. Grade B."

§ 265.161 Ascertaining the grade.

General. In addition to considering other requirements outlined in the standard, the following quality factors are evaluated in ascertaining the grade of the product.

(a) Factors not rated by score points: Flavor and odor. Flavor and odor are determined by organoleptic means after the product has been cooked in a suitable manner (§ 265.171(u)).

(b) Factors rated by score points: The quality of the product with respect to factors scored is expressed numerically on the scale of 100. Deductions from the maximum possible score of 100 are assessed for essential variations of quality within each factor. The score of frozen raw breaded shrimp is determined by observing the product in the frozen and thawed states.

§ 265.162 Factors evaluated on the product in the breaded state.

(a) Factors affecting qualities that are measured on the product in the breaded state are uniformly of size, condition of coating, extraneous material, and damaged breaded shrimp. For the purpose of rating the factors that are scored in the breaded state, the schedule of point deduction in table 1 applies. This schedule of point deductions is based on the examination of one complete individual package or intended package (sample unit) regardless of the net weight of the contents of the package.

(b) The factor—ease of separation in the frozen state—shall be rated in addition to all other factors when frozen raw breaded shrimp is lot inspected on a lot basis.

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§ 265.163 Factors evaluated on unbreaded or thawed debreaded product.

Factors affecting qualities that are measured on the product in the unbreaded or thawed debreaded state are degree of deterioration, dehydrations, sand veins, black spot, extra shell, extraneous material, and swimmerets. For the purpose of rating the factors that are scored in the unbreaded or thawed debreaded state, the schedule of point deductions in table 2 applies. This schedule of point deductions is based on the examination of 20 whole shrimp selected from the processing line or from one or more packages. Examination of this sample of 20 whole shrimp is continued under § 265.171(u).

§ 265.164 Hygienic processing.

Frozen raw breaded shrimp shall be processed and maintained in accordance with the applicable requirements of the Good Manufacturing Practice Regulations contained in Part 128 of Title 21, CFR, and the applicable requirements contained in Part 260 of this chapter.

§ 265.171 Definitions and methods of analysis.

(a) "*Fantail shrimp*": This type is prepared by splitting and peeling the shrimp except that for Subtype A, the tail fin remains attached and the shell segment immediately adjacent to the tail fin remains attached. Subtype B, the tail fin remains, but the shrimp are free of all shell segments. Subtype C, the shrimp are free of tail fins and all shell segments.

(b) "*Round shrimp*": This type is the round shrimp, not split. The shrimp are peeled except that for Subtype A, the tail fin remains attached and the shell segment immediately adjacent to the tail fin remains attached. Subtype B, the tail fin remains, but the shrimp are free of all shell segments. Subtype C, the shrimp are free of all shell segments and tail fins.

(c) *Good flavor and odor:* "Good flavor and odor", essential requirements for a Grade A product, means that the cooked product has flavor and odor characteristics of freshly caught or well-refrigerated shrimp and the breading is free from staleness and off-flavors and off-odors of any kind. Iodoform is not to be considered in evaluating the product for flavor and odor.

(d) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" minimum requirements of Grade B products, means that the cooked product may be somewhat lacking in the good flavor and odor characteristics of freshly caught or well-refrigerated shrimp but is free from objectionable off-flavors and objectionable off-odors of any kind.

(e) "*Dehydration*" refers to the occurrence of whitish areas on the exposed ends of the shrimp (due to the drying of the affected area) and to a generally desiccated appearance of the meat after the breading is removed.

(f) "*Deterioration*" refers to any detectable change from the normal good quality of freshly caught shrimp. It is evaluated by noting in the thawed product deviations from the normal odor and appearance of freshly caught shrimp.

(g) "*Extraneous material*" consists of nonedible material such as sticks, seaweed, shrimp thorax, or other objects that may be accidently present in the package.

(h) *Slight:* "Slight" refers to a condition that is scarcely noticeable but does affect the appearance, desirability, and/or eating quality of breaded shrimp.

(i) *Moderate:* "Moderate" refers to a condition that is conspicuously noticeable but that does not seriously affect the appearance, desirability, and/or eating quality of the breaded shrimp.

(j) *Marked:* "Marked" refers to a condition that is conspicuously noticeable and that does seriously affect the appearance, desirability, and/or eating quality of the breaded shrimp.

(k) *Excessive:* "Excessive" refers to a condition that is very noticeable and is seriously objectionable and the product cannot be graded above Grade B; this is a limiting rule.

(l) *Halo:* "Halo" means and easily recognized fringe of excess batter and breading extending beyond the shrimp flesh and adhering around the perimeter or flat edges of a split (butterfly) breaded shrimp.

(m) *Balling up:* "Balling up" means the adherence of lumps of the breading material to the surface of the breaded coating, causing the coating to appear rough, uneven, and lumpy.

(n) *Holidays:* "Holidays" means voids in the breaded coating as evidenced by bare or naked spots.

(o) *Damaged frozen raw breaded shrimp:* "Damaged frozen raw breaded shrimp" means frozen raw breaded shrimp that have been separated into two or more parts or that have been crushed or otherwise mutilated to the extent that their appearance is materially affected.

(p) *Black spot:* "Black spot" means any blackened area that is markedly apparent on the flesh of the shrimp.

(q) *Sand vein:* "Sand vein" means any black or dark sand vein that has not been removed, except for that portion under the shell segment adjacent to the tail fin when present.

(r) *Extra shell:* "Extra shell" means any shell segment(s) or portion thereof, contained in the breaded shrimp except the first segment adjacent to the tail fin for Type I, Subtype A, and Type II, Subtype A.

(s) *Net weight:* Net weight is determined by use of a balance and by following steps given below:

1. Remove the overwrap.
2. Weigh carton and all contents.
3. Transfer breaded shrimp to balance and weigh.
4. Weigh carton less shrimp but including waxed separators and inserts (if used), crumbs, and frost.
5. Remove crumbs and frost from carton and separators.
6. Weigh cleaned carton and separators.
7. Net weight of the shrimp is the weight of the shrimp and of any loose breading and frost, exclusive of packaging material. The amount of loose breading and frost shall not exceed the limits of good manufacturing practices.

(t) *Uniformity:* "Uniformity" is determined for packs of various sizes by the ratio of the weights of the largest to the smallest breaded shrimp as outlined by the following schedule:

Up to 10 oz	3 largest/3 smallest
10.1 oz. to 1.5 lb	6 largest/6 smallest
1.51 lb. to 2.5 lb	8 largest/8 smallest
Over 2½ lb	10 largest/10 smallest

(u) Percent shrimp material—official end product method:

(1) Equipment needed:

(i) Two-gallon container approximately 9 inches in diameter.

(ii) Two-vaned wooden paddle, each vane measuring approximately 1¾ inches by 3¾ inches.

(iii) Stirring device capable of rotating the wooden paddle at 120 rpm.

(iv) Balance accurate to 0.01 ounce (0.1 gram).

(v) U.S. standard sieve—1/2-inch sieve opening; 12-inch diameter.

(vi) U.S. standard sieve—ASTM—No. 20, 12-inch diameter.

(vii) Forcepts, with blunt points.

(viii) Shallow baking pan.

(ix) Rubber policeman to remove bits of breading from shrimp.

(2) *Procedure:* (i) Weigh sample (20 shrimp) to be debreaded. Fill container three-fourths full of water at 70°-80° F. Suspend the paddle in the container leaving a clearance of at least 5 inches below the paddle vanes, and adjust speed to 120 rpm. Add shrimp and stir for 10 minutes. Stack the sieves, the ½-inch mesh over the No. 20 and pour contents of container onto them. Set the sieves under a faucet, preferably with spray attached, and rinse the shrimp without rubbing the flesh, being careful to keep all rinsings over the sieves and not having the stream of water hit the shrimp on the sieve directly. Use a rubber policeman to remove adhering breading. Lay the shrimp out singly on the sieve as rinsed, split side down and tails up. Remove top sieve and drain on a 45-degree angle for 2 minutes, then transfer shrimp to balance. Rinse contents of the No. 20 sieve onto a shallow baking pan and collect any particles of shrimp material (flesh, tail fin), and add to shrimp on balance and weigh.

(ii) Calculate percent shrimp material.

% shrimp material = Weight of debreaded sample (20 shrimp)/Weight of sample (20 shrimp) × 100 + 2

(v) *Percent shrimp material—on-line method:* Percent shrimp material determined by the on-line method refers to the percent by weight of shrimp material in a sample as described below:

(1) Equipment needed:

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(i) Water bath (a container with a 3- to 4-liter capacity).

(ii) Balance accurate to 0.1 gram or 0.01 ounce.

(iii) Stop-watch or regular watch readable to a second.

(iv) U.S. Standard sieve—1/2-inch sieve opening; 12-inch diameter.

(v) U.S. Standard sieve ASTM No. 20, 12-inch diameter.

(vi) Thermometer (immersion type accurate to ±2° F.).

(vii) Forceps, with blunt points.

(viii) Shallow pan.

(ix) Rubber policeman to remove bits of breading from shrimp.

(2) *Procedure:* (i) Select in a random manner, a composite sample of 20 unfrozen raw breaded shrimp from production line(s). Weigh the composite sample on a scale, determining the weight of the sample to the nearest 0.1 gram or 0.01 ounce. Place the sample in a water bath filled to three-fourths capacity and in a container maintained at 60° F.-85° F. After shrimp are submerged in water and breading becomes soft, a "gentle" swirling action with hands may be applied to the shrimp to speed up the removal of the breading. Stack the sieves, the 1/2 inch mesh over the No. 20 and pour contents of container into them. Remove top sieve and drain on 45-degree angle for 2 minutes then transfer shrimp to balance. Rinse contents of No. 20 sieve onto a shallow pan and collect any particles of shrimp material (flesh, tail fin, etc.), and add to the shrimp on the balance and then weigh.

(ii) Calculate percent shrimp material:

% shrimp material = Weight of debreaded sample/Weight of sample × 100

(iii) Frequency of on-line shrimp material content determination. A minimum of three determinations of shrimp material content shall be carried out for small production runs or lots of the same style product, i.e., 3 × (20 unfrozen raw breaded shrimp). For larger production runs or lots of the same style product, a minimum of one determination, i.e., 1 × (20 unfrozen raw breaded shrimp) shall be carried out for every hour of production of product of the same style.

(w) *Cooked in a suitable manner:* "Cooked in a suitable manner" means cooked in accordance with the instructions accompanying the product. If, however, specific instructions are lacking, the product for inspection is cooked as follows:

(1) Transfer the breaded shrimp, while still frozen, in a wire mesh deep fry basket sufficiently large to hold the shrimp in a single layer without touching one another.

(2) Lower the basket into a suitable liquid oil or hydrogenated vegetable oil at 350°-375° F. Cook for 3 minutes, or until the shrimp attain a pleasing golden brown color.

(3) Remove basket from the oil and allow the shrimp to drain for 15 seconds. Place the cooked shrimp on a paper towel or napkin to absorb the excess oil.

§ 265.172 Use of alternate methods of shrimp material determination.

(a) The official end product method in § 265.171(u) for determining shrimp material content shall be used for lot inspection, appeal inspection, and inspection for verification in official establishments when the on-line method is used.

(b) The on-line method in § 265.171(v) (2) for determining shrimp material content may be used during processing operations.

§ 265.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS FOR RATING IN BREADED STATE

Factor	Quality description	Ded. allow. Points
1 Ease of separation in the frozen state	Separate easily after being removed from carton and exposed to room temperature for not more than 4 minutes.	3

TABLE 1—SCHEDULE OF POINT DEDUCTIONS FOR RATING IN BREADED STATE—Continued

Factor	Quality description	Ded. allow. Points
	Separate easily after being removed from carton and exposed to room temperature for not more than 6 minutes.	6
	Does not separate easily after being removed from carton and exposed to room temperature for 6 minutes.	10
2 Uniformity	Ratio of weight of largest to smallest breaded shrimp in sample unit as defined under § 265.171(t):.	
	Up to 1.50	0
	1.51-1.60	1
	1.61-1.70	2
	1.71-1.80	3
	1.81-1.90	4
	1.91-2.00	5
	2.01-2.10	6
	2.11-2.20	7
	2.21-2.30	8
	2.31-2.40	9
	Over 2.40	10
3 Condition of coating	Degree of halo or balling up or holidays (identify type of defect by circling the proper word):.	
	Slight—each 20 percent by count or fraction thereof	1
	Moderate—each 20 percent by count or fraction thereof	2
	Marked—each 20 percent by count or fraction thereof	4
	Excessive—each 20 percent by count or fraction thereof	16
4 Damaged breaded shrimp	For each 5 percent by count or fraction thereof	1
	Tail fin broken or missing each 5 percent or fraction thereof (except in Type I, subtype C, and Type II, subtype C).	3
5 Extraneous material	If extraneous material, except filthy or deleterious substances, is found in more than one package per lot, the entire lot shall be declared substandard [1].	

[1] Filthy or deleterious substances in food products constitute a violation of the Food, Drug, and Cosmetic Act. Products containing such substances are ineligible for the purpose of applying this document.

TABLE 2—SCHEDULE OF POINT DEDUCTIONS FOR EXAMINATION IN UNBREADED OR THAWED DEBREADED STATE

[Subtotals brought forward]

Factor	Quality description	Ded. allow. Points
1 Degree of dehydration	Slight—each shrimp	1
	Moderate—each shrimp	2
	Marked—each shrimp	3
	Excessive—each shrimp	16
2 Deterioration	Slight—each shrimp	2
	Moderate—each shrimp	5
	Marked—each shrimp	10
	Excessive—each shrimp (provided that, if excessive deterioration occurs in more than one sample unit per sample, the entire lot shall be declared substandard).	20
3 Sand veins where applicable [1]	For each dark vein present deduct according to the following schedule:	
	Equivalent in length to two segments	1
	Equivalent in length to three segments	2
	Equivalent in length to four or more segments	3
4 Black spot	Slight but obvious, on average	3
	Moderate, on average	
	Marked—each shrimp	63
5 Extra shell (see subtypes definition)	(Beyond first segment adjacent to tail fin only for Type I, subtype A, and Type II, subtype A):.	
	Less than one whole extra shell segment	1

TABLE 2—SCHEDULE OF POINT DEDUCTIONS FOR EXAMINATION IN UNBREADED OR THAWED DEBREADED STATE—Continued

[Subtotals brought forward]

Factor	Quality description	Ded. allow. Points
	One extra segment or more	3
6 Swimmerets	For last pair only adjacent to tail fins	1
	For more than last pair	3
7 Extraneous material	If extraneous material, except filthy or deleterious substances, are found in more than one package per lot, the entire lot shall be declared substandard[2]	

[1] Deduction points for sand veins shall not be applied to shrimp smaller than 70 count per pound in the raw, headless state. The corresponding size in the breaded state is 40 count per pound and 80 count per pound in the peeled state.

[2] Filthy or deleterious substances in food products constitute a violation of the Food, Drug, and Cosmetic Act. Products containing such substances are ineligible for the purpose of applying this document.

PART 266—UNITED STATES STANDARDS FOR GRADES OF MOLLUSCAN SHELLFISH

Subpart A—United States Standards for Grades of Frozen Raw Scallops

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AUTHORITY: 7 U.S.C. 1621-1630.

SOURCE: 42 FR 52782, Sept. 30, 1977, unless otherwise noted.

Subpart A—United States Standards for Grades of Frozen Raw Scallops

§ 266.101 Description of the product.

Frozen raw scallops are clean, wholesome, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species. The portion of the scallop used shall be only the adductor muscle "eye" which controls the shell movement. Scallops shall be washed, drained, packed, and frozen in accordance with good manufacturing practices and are maintained at temperatures necessary for the preservation of the product. Only scallops of a single species shall be used within a lot.

§ 266.102 Styles.

(a) *Style I.* Solid pack scallops are frozen together into a solid mass.

(1) *Substyle a.* Glazed.

(2) *Substyle b.* Not glazed.

(b) *Style II.* Individually quick-frozen pack (IQF) scallops are individually quick frozen. Individual scallops can be separated without thawing.

(1) *Substyle a.* Glazed.

(2) *Substyle b.* Not glazed.

§ 266.103 Types.

(a) *Type 1.* Adductor muscle.

(b) *Type 2.* Adductor muscle with catch (gristle or sweet meat) portion removed.

§ 266.104 Grades.

(a) "U.S. Grade A" is the quality of frozen raw scallops that: (1) possess good flavor and odor and that (2) for those factors that are rated in accordance with the scoring system outlined in this part, have a total score of 85 to 100 points.

(b) "U.S. Grade B" is the quality of frozen raw scallops that: (1) possess at least reasonably good flavor and odor, and that (2) rate a total score of not less than 70 points for these factors of quality that are rated in accordance with the scoring system outlined in this part.

(c) "Substandard" is the quality of frozen raw scallops that meets the requirements of § 266.101, *Description of the product,* but otherwise fails to meet the requirements of "U.S. Grade B."

§ 266.111 Determination of the grade.

In a plant under Contract USDC Inspection, the grade is determined by examining the product for factors 1 to 5 in the fresh or thawed state and Factor 6 in the cooked state. For lot inspection, examination of the product for Factor 1 is carried out in the frozen state and 2 to 5 in the thawed state. Factor 6 is examined in the cooked state.

(a) *Factors rated by score points.* Points are deducted for variation in the quality of each factor in accordance with the schedule in Table 1. The total of points deducted is subtracted from 100 to obtain the score. The maximum score is 100, the minimum score is 0.

(b) *Factors not rated by score points.* The factor of "Flavor and odor" is evaluated organoleptically by smelling and tasting the product in the cooked state.

(1) Good flavor and odor (essential requirements for a U.S. Grade A product) means that the product has the typical flavor and odor of the species and is free from bitterness, staleness, and off-flavor and off-odors of any kind.

(2) Reasonably good flavor and odor (minimum requirements for a U.S. Grade B product) means the product is lacking in good flavor and odor but is free from objectionable off-flavors and off-odors of any kind.

§ 266.121 Definitions and methods.

(a) *Selection of the sample unit.* The sample unit shall consist of the primary container and its entire contents. The number and size of sample units to be examined shall be as indicated in § 273.25.

(b) *Examination of sample, frozen state.* When this product is examined under Contract USDC Inspection, the samples are examined for Factor 1 in Table 1 in the fresh or thawed state. When the product is lot inspected, the samples are examined for Factor 1, in Table 1 in the frozen state.

TABLE 1—SCHEDULE OF POINT DEDUCTIONS PER SAMPLE

Factors scored	Method of determining score	Deduct
	FROZEN STATE	
1 Dehydration...	Small degree: Easily scraped off of each 10 percent of top surface affected	
	Large degree: Deep dehydration not easily scraped off, affecting each 10 percent of surface	24
	FRESH OR THAWED STATE	
1 Undesirable pieces	Percent by weight:	
	Up to 5 percent	3
	Over 5 percent—not over 10 percent	6
	Over 10 percent	16
3 Uniformity	Weight ratio	
	Over 2.5—not over 3.0	4
	Over 3.0—not over 3.3	6
	Over 3.3	10
4 Color	Each 10 percent by count of nonuniform colored scallops in excess of the 10 percent of nonuniform colored scallops permitted	10
5 Extraneous material	Minor: Each instance of minor extraneous material in the sample unit per pound	1
	Major: Each instance of major extraneous material in the sample unit per pound	5
	COOKED STATE	
6 Texture	Firm but tender and moist	0
	Small degree: Moderately tough, dry, and fibrous or mushy	5
	Large degree: Excessively tough, dry and fibrous or mushy	15

(1) "Dehydration" refers to the loss of moisture from the scallops surface during frozen storage. Small degree of dehydration is color-masking but can be easily scraped off. Large degree of dehydration is deep, color-masking, and requires a knife or other instrument to scrape it off.

(c) *Examination of sample, thawed state.* When necessary, thawing the sample is best accomplished by enclosing it in a water impermeable film-type bag and immersing in an agitated water bath at 68° F.±2° F. The complete thawing of the product is determined by gently squeezing the bag occasionally until no hard core or ice crystals are felt.

(1) Undesirable small pieces are pieces which will pass through the openings in a ¾-inch sieve for larger size scallops. For the smaller scallops, such as bay scallops, undesirable pieces are pieces of scallops that do not have the general conformation of the other scallops. The total weight of these pieces within a sample unit will be obtained. These pieces shall not be used for determining the weight ratio.

(2) Uniformity of size refers to the degree of weight uniformity of the individual scallops. This factor is measured by obtaining a weight ratio between the largest and smallest scallops. The determination is made on the thawed scallops by dividing the total weight of the 15 percent (by count) of the largest scallops by the 15 percent (by count) of the smallest scallops.

(3) "Color" refers to reasonably uniform color characteristics of the species used within an individual container. Only noticeable variation in color from the predominating color of the scallops in the container is considered. Medium gray to black colored scallops are not to be graded.

(4) "Extraneous materials" are pieces or fragments of undesirable material that are naturally present in or on the scallops and which should be removed during processing.

(i) An instance of minor extraneous material includes but is not limited to each occurrence of intestines, seaweed, etc., and each aggregate of sand and grit up to ½-inch square and located on the scallop surface. Deduction points shall be assessed for additional instances of intestines, seaweed, etc., and aggregates of sand and grit up to ½-inch square.

(ii) An instance of major extraneous material includes but is not limited to each instance of shell or aggregate of embedded sand or other extraneous embedded material that affects the appearance or eating quality of the product.

(d) *Examination of sample, cooked state.* Cooked state means the state of the sample after being cooked. Place at least 25 percent by weight of the thawed sample from each sample unit into a boilable film-type pouch and seal. Submerge the pouch and its contents into boiling water for about 3 or 4 minutes or until cooked. Alternatively the product is placed into a baking pan lined with aluminum foil. A cover of aluminum foil is crimped around the edges of the top of the pan. The pan is placed in an oven that has been pre-heated to 450° F. for 20 minutes or until cooking has been completed. Flavor and odor and texture shall be evaluated in the cooked state.

(1) "Texture" refers to the firmness, tenderness, and moistness of the cooked scallop meat, which is characteristic of the species.

(e) *General definitions.* (1) "Small" (overall assessment) refers to a condition that is noticeable but is only slightly objectionable.

(2) "Large" (overall assessment) refers to a condition that not only is noticeable but is seriously objectionable.

(3) "Minor" (individual assessment) refers to a defect that slightly affects the appearance and/or utility of the product.

(4) "Major" (individual assessment) refers to a defect that seriously affects the appearance and/or utility of the product.

(5) "Net weight" means the total weight of the scallop meats within the package after removal of all packaging materials, ice glaze, or other protective materials.

§ 266.125 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter (Regulations Governing Processed Fishery Products).

Subpart B—United States Standards for Grades of Frozen Raw Breaded Scallops and Frozen Fried Scallops

EDITORIAL NOTE: Nomenclature changes to Subpart B appear at 44 FR 32393, June 6, 1979.

§ 266.151 Product description.

(a) *Frozen raw breaded scallops*—Frozen raw breaded scallops are: (1) Prepared from wholesome, clean, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species, or scallop units cut from a block of frozen scallops that are coated with wholesome batter and breading; (2) packaged and frozen according to good commercial practice and maintained at temperatures necessary for preservation; and (3) composed of a minimum of 50 percent by weight of scallop meat.

(b) *Frozen fried scallops*—Frozen fried scallops are. (1) Prepared from wholesome, clean, adequately drained, whole or cut adductor muscles of the scallop of the regular commercial species, or scallop units cut from a block of frozen scallops that are coated with wholesome batter and breading; (2) precooked in oil or fat; (3) packaged and frozen according to good commercial practice and maintained at temperatures necessary for preservation; and (4) composed of a minimum of 50 percent by weight of scallop meat.

[44 FR 32392, June 6, 1979]

§ 266.152 Styles.

The styles of frozen raw breaded scallops and frozen fried scallops include:

(a) *Style I Random pack.* Scallops in a package are reasonably uniform in weight and/or shape. The weight or shape of individual scallops are not specified.

(b) *Style II Uniform pack.* Scallops in a package consist of uniform shaped pieces which are of specified weight or range of weights.

§ 266.153 Types.

(a) *Type 1.* Adductor muscle.

(b) *Type 2.* Adductor muscle with catch (gristle or sweet meat) portion removed.

[44 FR 32392, June 6, 1979]

§ 266.154 Grades.

(a) "U.S. Grade A" is the quality of frozen raw breaded scallops and frozen fried scallops that possess good flavor and odor; and for those factors of quality which are rated according to the scoring system outlined in this part, the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen raw breaded scallops and frozen fried scallops that possess at least reasonably good flavor and odor; and for those factors of quality which are rated according to the scoring system outlined in this part, the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen raw breaded scallops and frozen fried scallops that fail to meet the requirements of U.S. Grade B.

[42 FR 52782, Sept. 30, 1977. Redesignated and amended at 44 FR 32392, June 6, 1979]

§ 266.161 Ascertaining the grade.

The grade of frozen raw breaded scallops and frozen fried scallops is determined by examining the product in the frozen and cooked states. Factors of quality evaluated in ascertaining the grade of the product are flavor and odor appearance, uniformity, absence of defects, and character.

(a) Flavor and odor are rated directly by organoleptic evaluation. Score points are not assessed (see § 266.162).

(b) Appearance, uniformity, absence of defects, and character are rated numerically on a scale of 100. The maximum number of points that may be given each of these factors are:

Factors	Points
Appearance	[1] 25
Uniformity	[1] 120
Absence of defects	40
Character	[1] 15

Factors	Points
Total possible score	100

[1] Frozen raw breaded scallops and frozen fried scallops which receive the maximum number of deduction points for any of these factors shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

§ 266.162 Evaluating the unscored factor of flavor and odor.

(a) "Good flavor and odor" (essential requirements for a Grade A product) means that the cooked product has flavor and odor characteristics of good scallop meat and of the breading and is free from staleness and off-flavors and off-odors of any kind.

(b) "Reasonably good flavor and odor" (minimum requirements of a Grade B product) means that the cooked product is lacking in good flavor and odor, but is free from objectionable off-flavors and off-odors of any kind.

(c) "Substandard flavor and odor" (Substandard grade) means that the flavor and odor fails to meet the minimum requirements of "reasonably good flavor and odor."

§ 266.163 Evaluating and rating the scored factors of appearance, uniformity, workmanship defects, and character.

Point deductions are allotted for each degree or amount of quality variation within each of the factors that are scored. The net score for each quality factor is obtained by subtracting the deduction-points assessed for that factor from the maximum points allotted to that factor. The total score for the product is the sum of the net scores for the four individually scored factors.

§ 266.164 Appearance.

(a) Appearance refers to the condition of the package and ease of separation in the frozen state and continuity and color in the cooked state.

(1) "Condition of the package" refers to freedom from packaging defects and the presence in the package of oil, and/or loose breading, and/or frost. Deduction points are based on the degree of the improper condition as small or large.

(2) "Ease of separation" refers to the difficulty of separating scallops that are frozen together after the frying operation and during freezing.

(3) "Continuity" refers to the completeness of the coating of the product in the cooked state. Lack of continuity is exemplified by breaks, ridges and/or lumps of breading. Each 1/16 square inch area of any break, ridge, or lump of breading is considered an instance of lack of continuity. Individual breaks, ridges, or lumps of breading measuring less than 1/16 square inch are not considered objectionable. Deduction points are based on the percentage of the scallops within the package that contain small and/or large instances of lack of continuity.

(4) "Color" refers to reasonably uniform color which is characteristic of the product in the cooked state.

Deviations in color are visually measured as "small" and "large". A "small" instance of deviation in color means that the scallop varies noticeably from the predominating color of the package. A "large" instance of deviation in color means that the scallop varies markedly from the predominating color of the package. The deduction points assessed are based on the degree of deviation as small or large and the percentage by count of the scallops affected in the package.

(b) For the purpose of rating the factor of appearance, the schedule of deduction points in Table I applies. Frozen raw breaded scallops and frozen fried scallops which receive 25 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCHEDULE OF POINT-DEDUCTIONS FOR VARIATIONS IN APPEARANCE

Appearance subfactors	Method of determining subfactor score	Ded. points
	Degree of condition of the package	
Condition of the package in the frozen state	(a) Small (moderate amount of free oil and/or loose breading, and/or frost, and/or packaging defects)	2
	(b) Large (excessive amount of free oil, and/or loose breading, and/or frost, and/or packaging defects)	5

Appearance subfactors	Method of determining subfactor score	Percent of scallops affected		Ded. points
		Over—	Not over—	
	Degree of ease of separation			
Ease of separation of the scallops in frozen state.	Moderate (scallops separated by hand with difficulty)	0	30	1
		30	70	2
		70	—	3
	Severe (scallops separated only by use of knife or other instrument).	0	30	4
		30	70	10
		70	—	15
Continuity of the scallops in the cooked state	Lack of continuity (breaks, ridges, and lumps)[1]	0	20	2
		20	50	4
		50	70	6
	Small (1 to 3 instances per scallop)	70	—	10
		0	20	4
	Large (over 3 instances per scallop)	20	50	8
		50	70	12
		70	—	25
	Deviation from predominating color of fried scallops in cooked state			
Color of the scallops in the cooked state	Small instance of deviation in color means that the scallop varies noticeably from the predominating color of the package after cooking.	0	10	0
		10	30	2
		30	—	4
	Large instance of deviation in color means that the scallop varies markedly from the predominating color of the package after cooking.	0	10	4
		10	30	10
		30	—	25

[1] Each 1/16 square inch is considered an instance.

§ 266.165 Uniformity.

(a) Uniformity refers to the degree of freedom from undesirably small pieces and to the degree of uniformity of the weights of the frozen raw breaded scallops and frozen fried scallops within the package.

(1) For Style I, deduction points are assessed for: (i) Undesirable small pieces as determined by the percent by count of pieces passing through a sieve with ¾ inch openings, and (ii) uniformity of size of the scallops remaining in the sieve as determined by the ratio of the weight of the 15 percent largest scallops (minimum three) divided by the 15 percent smallest scallops (minimum three). The number constituting this percentage shall be the closest approximation of 15 percent, determined by count.

(2) For Style II, deduction points are based on the percentage by count of small or large scallops deviating from the average weight within the package.

(b) For the purpose of rating the factor of uniformity, the schedules of deduction points in Table II apply. Frozen raw breaded scallops and frozen fried scallops which receive 20 deduction points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE II—SCHEDULE OF POINT-DEDUCTIONS FOR UNIFORMITY

Factor	Method of determining subfactor score	Percent of scallops affected		Ded points
		Over—	Not over—	
	A. Style I (Random pack)			
Uniformity of size and weight of scallops in frozen state	(a) Undesirable small pieces which pass through a sieve with ¾ inch openings.	0	10	3
		10	20	6
		20	—	10
	(b) Weight ratio of scallops remaining in the sieve. The 15 percent largest scallops (minimum 3) divided by the 15 percent smallest scallops (minimum 3). The 15 percent to be determined by count.	—	[1] 2.0	[1] 0
		[1] 2.0	[1] 2.5	[1] 1
		[1] 2.5	[1] 2.9	[1] 3
		[1] 2.9	[1] 3.3	[1] 6
		[1] 3.3	—	[1] 10
	B. Style II (Uniform pack) Deviation from average weight			
	(a) Small (scallops deviating ± 10 to 20 percent from average weight)	0	30	3
		30	70	5
		70	—	10
	(b) Large (scallops deviating over ± 20 percent from average weight)	0	30	6
		30	70	10
		70	—	20

[1] Ratio.

§ 266.166 Workmanship defects.

(a) Workmanship defects refer to the degree of freedom from doubled and misshaped scallops and extraneous material. The defects of doubled and misshaped scallops are determined by examining the frozen product, while the defects of extraneous materials are determined by examining the product in the cooked state. Deduction points are based on the percentage by count of the scallops affected within the package.

(1) *Doubled scallops.* Two or more scallops that are joined together during the breading and/or frying operations.

(2) *Misshaped scallops.* Elongated, flattened, mashed or damaged scallop meats.

(3) *Extraneous material.* Extraneous materials are pieces or fragements of undesirable material that are naturally present in or on the scallops and which should be removed during processing.

(i) Examples of minor extraneous material include intestines, seaweed, and each aggregate of sand and grit within an area of ½-inch square.

(ii) Examples of major extraneous material include shell, aggregate of embedded sand or other extraneous embedded material that affects the appearance or eating quality of the product.

(b) For the purpose of rating the absence of defects, the schedule of deduction points in Table III applies.

TABLE III—SCHEDULE OF POINT DEDUCTIONS FOR WORKMANSHIP DEFECTS, SUBFACTORS, MISSHAPED OR DOUBLED SCALLOPS, AND EXTRANEOUS MATERIAL

Defect subfactors	Method of determining subfactor score	Percent of scallops affected		Deduction points
		Over—	Not over—	
Misshaped or doubled scallops in the frozen state.	Misshaped scallops (elongated, flattened, mashed, or damaged scallop meats).	0	10	3
		10	20	7
		20		15
	Doubled scallops (2 or more scallops joined together during breading and/or frying operation).			
Extraneous material in the cooked state	Minor: Each instance of minor extraneous material in the sample unit per pound.			1

TABLE III—SCHEDULE OF POINT DEDUCTIONS FOR WORKMANSHIP DEFECTS, SUBFACTORS, MISSHAPED OR DOUBLED SCALLOPS, AND EXTRANEOUS MATERIAL—Continued

Defect subfactors	Method of determining subfactor score	Percent of scallops affected		Deduction points
		Over—	Not over—	
	Major. Each instance of major extraneous material in the sample unit per pound			5

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392, June 6, 1979]

§ 266.167 Character.

(a) Character refers to the texture of the scallop meat and of the coating and the presence of gristle in the cooked state. Deduction points are based on the degree of variaion in the texture attributes of the coating and scallop meat or the relationship between the number of instances and the number of scallops within the package.

(1) *Gristle.* Gristle (type 2 only) is the tough elastic tissue usually attached to the scallop meat. Each instance of gristle is an occurrence.

(2) *Texture* refers to the firmness, tenderness, and moistness of the cooked scallop meat and to the crispness and tenderness of the coating of the cooked product. The texture of the scallop meat may be classified as a degree of mushiness, toughness, and fibrousness. The texture of the coating may be classified as a degree of pastiness, toughness, dryness, mushiness, or oiliness.

(b) For the purpose of rating the factor of character, the schedules of deduction points in Tables IV and V apply. Frozen raw breaded scallops and frozen fried scallops which receive 15 deduction points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE IV—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF TEXTURE

Character subfactors	Method of determining subfactor score	Ded. points
Texture in the cooked state	Texture of the coating	
	Firm or crisp but not tough, pasty, mushy, or oily	0
	Moderately tough, pasty, mushy, or oily	5
	Excessively tough, pasty, mushy, or oily	15
	Texture of the scallop meat	
	Firm, but tender and moist	0
	Moderately tough, dry, and/or fibrous or mushy	5
	Excessively tough, dry, and/or fibrous or mushy	15

TABLE V—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF GRISTLE

Number of scallops per 7 ounces	Number of instances of gristle								
	0	1	2	3	4	5	6	7	8 or more
	Point deductions								
10 or less	0	2	4	6	8	10			
11	0	2	4	6	8	10			
12	0	2	4	6	8	10			
13	0	1	3	5	8	10			
14	0	1	3	5	7	9	10		
15	0	1	2	4	6	8	10		
16	0	1	2	4	6	8	10		

TABLE V—SCHEDULE OF POINT-DEDUCTIONS FOR CHARACTER SUBFACTOR OF GRISTLE—Continued

Number of scallops per 7 ounces	Number of instances of gristle								
	0	1	2	3	4	5	6	7	8 or more
17	0	1	2	4	6	8	10		
18	0	1	2	3	4	6	8	10	
19	0	1	2	3	4	6	8	10	
20 or more	0	1	2	3	4	6	8	10	

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392 June 6, 1979]

§ 266.171 Definitions and methods of analysis.

(a) *Percent of scallop meat* refers to percent, by weight, of scallop meat in a sample as determined by the following method:

(1) *Equipment needed.* (i) Water bath (3 to 4 liter beaker).

(ii) Balance accurate to 0.1 gram.

(iii) Clip tongs of wire, plastic, or glass.

(iv) Stop-watch or regular watch with second hand.

(v) Paper towels.

(vi) Spatula, 4-inch blade with rounded tip.

(2) *Procedure.* (i) Weigh all scallops in the sample while still in a hard frozen condition.

(ii) Place each scallop individually in the water bath which is maintained at 63° to 86° F. and allow the scallop to remain until such time as the breading becomes soft and can easily be removed from the still frozen meat (between 10 to 30 seconds for scallops held in storage at 0° F.).

(iii) Remove the scallop from the bath; blot lightly with double thickness paper toweling; and scrape off or pick out coating from the scallop meat with the spatula or nutpicker.

(iv) Weigh all "debreaded" scallop meats.

(v) Calculate the percent of scallop meat in the sample by the following formula:

"Percent Scallop meat = weight of scallop meat (iv)/weight of frozen fried or breaded scallops (i) × 100"

(b) *Cooked state.* Cooked state shall mean that the product shall be cooked in accordance with the instructions accompanying the product.

(1) If specific instructions are lacking for fried scallops, the product for inspection shall be cooked as follows: Spread the frozen scallops on a foil covered baking sheet or a shallow pan. Place sheet or pan in frozen content at the mid-point of a properly ventilated oven preheated to 400 degrees Fahrenheit until thoroughly cooked, 15 to 20 minutes.

(2) If specific instructions are lacking for the breaded scallops, the product for inspection shall be cooked as follows: Place frozen, breaded product in wire mesh fry basket large enough to hold all items in single layer. Heat by immersing in 375° F (190° C) edible cooking oil 2-3 minutes or until items float to surface. After cooking, let items drain 15 seconds and place on paper napkin or towel to absorb excess oil.

(c) *Definitions.* (1) "Moderate" refers to a scored condition that is readily noticeable but is not seriously objectionable.

(2) "Excessive" refers to a condition that is very noticeable and is seriously objectionable.

(3) "Instance" refers to an occurance of an individual scored subfactor on a scallop.

[42 FR 52782, Sept. 30, 1977, as amended at 44 FR 32392, June 6, 1979]

§ 266.175 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 260 of this chapter.

PART 267—INTERIM UNITED STATES STANDARDS FOR GRADES OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

Sec.

267.101 Description of the product.
267.102 Product forms.
267.103 Grades.
267.104 Grade determination.
267.105 Tolerances for lot certification.
267.106 Hygiene.
267.107 Methods of analysis.
TABLE I—Schedule of Point Deductions of North American Freshwater Catfish and Products Made There from

AUTHORITY: 16 U.S.C. 742e; 7 U.S.C. 1622, 1624.

SOURCE: 49 FR 27515, July 5, 1984, unless otherwise noted.

EFFECTIVE DATE NOTE: At 49 FR 27515, July 5, 1984, Part 267 was added, effective August 6, 1984 through January 6, 1986.

§ 267.101 Description of the product.

(a) These U.S. Standards for Grades apply to products derived from farm-raised or from rivers and lakes, North American freshwater catfish of the following common commercial species and hybrids thereof.

(1) Channel catfish (*Ictalurus punctatus*)

(2) White catfish (*Ictalurus catus*)

(3) Blue catfish (*Ictalurus furcatus*)

(4) Flathead catfish (*Pylodictis olivaris*)

(b) Fresh products will be packaged in accordance with good commercial practices and maintained at temperatures necessary for the preservation of the product. Frozen products will be frozen to 0 °F (−18 °C) at their center (thermal core) in accordance with good commercial practices and maintained at temperatures of 0 °F (−18 °C) or less.

(c) These Standards will be implemented in accordance with the guidance set forth in Part II of NOAA Handbook 25, "Inspectors Instructions for Grading North American Freshwater Catfish and Products Made Therefrom".

[49 FR 27515, July 5, 1984; 49 FR 37423, Sept. 24, 1984]

§ 267.102 Product forms.

Catfish products may be presented and described as follows:

(a) Types refers to either—

(1) Fresh, or

(2) Frozen.

(b) Styles refers to either—

(1) Skin on, or

(2) Skinless.

(c) Market forms include but are not limited to the following:

(1) Headed and gutted.

(2) Headed dressed (headed and gutted, with or without dorsal spine, with or without collar bone).

(3) Whole fillets (practically boneless pieces of fish cut parallel to the entire length of the backbone with the belly flaps, with or without the black membrane).

(4) Trimmed fillets (whole fillets without belly flaps).

(5) Fillet strips (strips of fillets weighing not less than ¾ oz.).

(6) Catfish steaks (units of fish not less than 1½ oz. in weight; which are cut approximately (±30°) perpendicular to the backbone. The number of tail sections that may be included in the package must not exceed the number of fish cut per package).

(7) Nuggets (pieces of belly flaps with or without black membrane weighing not less than ¾ oz.).

§ 267.103 Grades.

(a) U.S. Grade A fresh or frozen products will possess good flavor and odor and be within the limits specified for defects for U.S. Grade A quality in § 267.104.

(b) U.S Grade B fresh or frozen products will possess reasonably good flavor and odor and be within the limits specified for defects for U.S. Grade B quality in § 267.104.

(c) U.S. Grade C fresh or frozen products will possess reasonably good flavor and odor and be within the limits specified for defects for U.S. Grade C quality in § 267.104.

(d) "Substandard" fresh or frozen products will possess minimum acceptable flavor and odor or exceed the limits specified for physical defects for U.S. Grade C quality in § 267.104.

§ 267.104 Grade determination.

(a) *Procedures for grade determination.* The grade will be determined by evaluating the fresh product in the fresh and cooked states or the frozen product in the frozen, thawed, and cooked states in accordance with applicable paragraphs in this section.

(b) *Sampling.* Lot size, number of sample units, and acceptance numbers will be selected in accordance with 50 CFR 260.61, Tables II, V, or VI as applicable. A sample unit consists of 10 "portions" for market forms (1) and (2) or 2 pounds of "portions" for market forms (3) thru (7). "Portion" is one unit of any of the market forms.

(c) *Evaluation of flavor and odor*—(1) *Procedure.* For raw odor evaluation frozen portions may be frozen or thawed. They will be broken apart and the exposed flesh immediately held close to the nose to detect any off-odors. To evaluate flavor and odor, cook the sample units using the procedure from the 13th edition of *Methods of Analysis—A.O.A.C.* or its supplement as referenced in § 267.107.

(2) *Definition of flavor and odor*—(i) *Good* flavor and odor (minimum requirements for a Grade A product) means that the product has the normal, pleasant flavor and odor characteristics of the species, and is free from off-flavors and off-odors of any kind, such as mustiness, staleness, and rancidity.

(ii) *Reasonably good* flavor and odor (minimum requirements of a Grade B and a Grade C Product) means that the product may be somewhat lacking in good flavor and odor characteristics of the species, but is free from objectionable off-odors of any kind.

(iii) *Substandard* flavor and odor means that the product does not meet the requirements for a U.S. Grade C or better product, but is safe for human consumption.

(d) *Examination for physical defects.* Each sample unit will be examined for physical defects using the defect definitions that follow. Deduction points are assigned in accordance with Table I.

(1) "*Condition of the product*" refers to the freedom from packaging defects, foreign material, cracks in the surface of the frozen product, and excess moisture (drip) or blood inside the package. Deduction points are based on the degree of defect.

(i) *Slight:* 1/16 square inch to one square inch in aggregrate area.

(ii) *Moderate:* greater than one square inch up to 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category (e.g., 2 1/16 in. receives 5 pts; 3 1/16 in. receives 10 pts.).

(2) "*Discoloration*" refers to colors not normal to the species. This may be due to mishandling or the presence of blood, bile, or other substances.

(i) *Slight:* 1/16 square inch to one square inch in aggregate area.

(ii) *Moderate:* greater than one square inch up to 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(3) "*Uniformity*" applies to sized or portion-controlled products. Uniformity refers to the degree of uniformity of the weights of the portions in the container. It is obtained by weighing individual portions to determine their conformity to declared weights. Uniformity will be assigned in accordance with the weight tolerances as follows:

Weight of portion—

.75 to 4.16 oz.

Moderate: up to 1/4 ounce above or below declared weight of portion

Excessive: in excess of 1/4 ounce above or below declared weight of portion

4.17 to 11.20 oz.

Moderate: up to 1/2 ounce above or below declared weight of portion

Excessive: in excess of 1/2 ounce above or below declared weight

11.21 to 17.30 oz.

Moderate: up to 3/4 ounce above or below declared weight of portion

Excessive: in excess of 3/4 ounce above or below declared weight of portion

(4) "*Skinning*" refers to improper cuts made during the skinning operation as evidenced by torn or ragged surfaces or edges, or gouges in the flesh which detract from the good appearance of the product.

(i) *Slight:* 1/16 square inch to 1 square inch in aggregate area.

(ii) *Moderate:* over one square inch to 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(5) "*Heading*" refers to the presence of ragged cuts or pieces of gills, gill cover, pectoral fins (spines), or collar bone after heading. Deduction points also will be assigned when the product is marketed with the collar bone and it has been completely or partially removed.

(i) *Slight:* 1/16 square inch to one square inch in aggregate area.

(ii) *Moderate:* over one square inch to 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(6) "*Evisceration*" refers to the proper removal of viscera, kidney, spawn, blood, reproductive organs, and abnormal fat (leaf). The evisceration cut should be smooth and clean. Deduction points are based on the degree of defect.

(i) *Slight:* 1/16 square inch to 1 square inch in aggregate area.

(ii) *Moderate:* over 1 square inch and less than 2 square inches in aggregate area.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(7) "*Fins*" refers to the presence of fins, pieces of fins or dorsal spines. It applies to all market forms except headed and gutted and headed dressed catfish and catfish steaks. Deduction points also will be assigned when the product (usually headed and gutted) is marketed with the dorsal spine and it has been completely or partially removed.

(i) *Slight:* aggregate area up to one square inch.

(ii) *Moderate:* over one square inch to 2 square inches.

(iii) *Excessive:* over 2 square inches in aggregate area. Also, each additional complete one square inch is again assessed points under this category.

(8) *Bones* (including pin bone and fin bone). Each bone defect is a bone or part of a bone that is 3/16 inch (5.0 mm)or more at its maximum length *or* 1/32 inch (0.1 mm) or more at its maximum shaft width, or for bone chips (a part of the vertebra), a length of at least 1/16 inch (2.0 mm). An excess bone defect is any bone which *cannot* be fitted into a rectangle, which has a length of 1 9/16 inch (40 mm) and a width of 3/8 inch (10 mm).

(9) "*Skin*" refers to the presence of skin on skinless forms. For semiskinned forms, a skin defect is the presence of the darkly pigmented outside layers. Deduction points will be assessed for each aggregate occurrence greater than 1/2 square inch and less than one square inch.

(10) *Bloodspots*" refers to presence of coagulated blood; whereas,

"*Bruises*" refers to the softening and discoloration of the flesh. Deduction points will be assessed for each aggregate occurrence of bloodspots or bruises greater than 1/2 square inch and less the one square inch.

(11) "*Foreign material*" refers to any extraneous material, including packaging material, not derived from the fish that is found on or in the portion. Each occurrence will be assessed.

(12) "*Dehydration*" refers to the loss of moisture from the fish flesh resulting in a dry, porous, or spongy condition and the oxidation of the surface of the tissue.

(i) *Slight:* surface dehydration which is not color masking (readily removed by scraping) affecting 3 to 10 percent of the surface area.

(ii) *Moderate:* deep dehydration which is color masking, cannot be easily scraped off with a sharp instrument, and effects more than one percent but not more than 10 percent of surface area.

(iii) *Excessive:* deep dehydration which is color masking, and cannot be easily scraped off with a sharp instrument and affects more than 10 percent of surface area.

(13) "*Texture*" refers to the presence of normal textural properties of the cooked fish flesh, i.e., tender, firm, and moist without excess water. Texture defects are described as dry,

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tough, mushy, rubbery, watery, and stringy.

(i) *Moderate:* noticeable as dry, tough, mushy, rubbery, watery, stringy.

(ii) *Excessive:* markedly dry, tough, mushy, rubbery, watery, stringy.

(e) *Listing defect points.* Each sample unit is examined for physical defects, using the list of definitions given herein. The point deductions for defects are listed for each sample unit, and the point values totaled. The total of the defect points determines the sample unit grade. The scoring system is based on a perfect score of zero.

(f) *Grade assignment.* Each sample unit will be assigned the grade in accordance with the limits for defects summarized as follows:

Grade assignment	Flavor and odor	Maximum number of defect points
U.S. Grade A	Good	15
U.S. Grade B	Reasonably good	30
U.S. Grade C	Reasonably good	40
Substandard	Substandard	Over 40

If a sample unit has been assigned a grade for flavor and odor different than the grade indicated by the number of defect points, the sample unit grade will be the lower grade.

§ 267.105 Tolerances for lot certification.

(a) The grade assigned to a lot is the grade indicated by the majority of the sample unit grades provided that the number of sample units in the next lower grade does not exceed the acceptance number as given in the sampling plans contained in § 260.61 of this chapter.

(b) The grade assigned to a lot is one grade below the majority of all the sample unit grades if either—

(1) The number of sample units in the next lower grade exceeds the acceptance number as given in the sampling plans contained in § 260.61 of this chapter, or

(2) The grade of any one of the sample units is more than one grade below the majority of all the sample unit grades.

§ 267.106 Hygiene.

Catfish products will be processed in official establishments as defined in § 260.6 of this chapter and maintained in accordance with §§ 267.101 to 267.107 of this chapter and of the good manufacturing practice regulations contained in 21 CFR Part 110.

§ 267.107 Methods of analysis.

Product samples will be analyzed in accordance with the "Official Methods of Analysis of the Association of Official Analytical Chemists", (AOAC), Thirteenth Edition (1980), sections 32.050 and 32.051 (page 543), section 18.001 (page 285) and the "Fourth Supplement to the Thirteenth Edition" (Journal of the AOAC, volume 66, number 2, 1983), section 18.001, (page 526), which are incorporated by reference. Copies of the AOAC methods may be obtained from AOAC, 1111 North Nineteenth Street, Arlington, VA 22209 and are available for inspection at the Office of the Federal Register, 1100 L Street, Room 8401, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on January 10, 1984. These methods are incorporated as they exist on the date of this approval. A notice of any change in the sections of the AOAC methods cited herein will be published in the FEDERAL REGISTER.

TABLE I—SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Deduct
1. Condition of product:		
1/16 sq in to 1 sq in	Slight	1
Over 1 sq in to 2 sq in	Moderate	[illegible]
Over 2 sq in and each additional complete 1 sq in	Excessive	5
2. Discoloration:		
1/16 sq in to 1 sq in	Slight	4
Over 1 sq in to 2 sq in	Moderate	9
Over 2 sq in and each additional complete 1 sq in	Excessive	15

TABLE I—SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM—Continued

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Deduct
3 Uniformity: Deviation above or below declared weight of portion		
Weight of portion	Moderate	
0.75 to 4.14 oz	over 1/8 but not over 1/4 oz	
4.17 to 11.20 oz	over 1/4 but not over 1/2 oz	5
11.21 to 17.30 oz	over 1/2 but not over 3/4 oz	
	Execessive	
0.75 to 4.16 oz	over 1/4 oz	
4.17 to 11.20 oz	over 1/2 oz	10
11.21 to 17.30 oz	over 3/4 oz	
4 Skinning (skinless products only)		
1/16 sq. in. to 1 sq. in.	Slight	1
Over 1 sq. in. to 2 sq. in.	Moderate	3
Over 2 sq. in. and each additional complete 1 sq. in.	Excessive	8
5 Heading (whole fish only)		
1/16 sq. in. to 1 sq. in.	Slight	5
Over 1 sq. in. to 2 sq. in.	Moderate	16
Over 2 sq. in. and each additional complete 1 sq. in.	Excessive	30
6 Evisceration (whole fish and steaks only)		
1/16 sq. in. to 1 sq. in.	Slight	5
Over 1 sq. in. but less than 2 sq. in.	Moderate	16
2 sq. in. or over	Excessive	30
7 Fins:		
Up to 1 sq. in.	Slight	1
Over 1 sq. in. to 2 sq. in.	Moderate	5
Over 2 sq. in.	Excessive	10
8 Bones (including pin bone):		
Bones: 3/8 in. long *or* 1/32 in. wide	Each occurrence	5
Bone chip: 1/16 in. long	Each occurrence	5
Excessive: 1 15/16 in. long 1/8 in. wide	Each occurrence	10
9 Skin (skinless products only)		
Greater than 1/2 sq. in. and less than 1 sq. in.	Each occurrence	5
10 Bloodspots, bruises		
Greater than 1/2 sq. in. and less than 1 sq. in.	Each occurrence	5
11 Foreign matter		
Harmless material	Each occurrence	4
12 Dehydration (frozen product only)		
Slight	Each occurrence affecting 3 to 10% of surface area but readily removed by scraping	5
Moderate	Affecting more than 1% but not more than 10% of surface area and cannot be easily removed by scraping	16
Excessive	Affecting more than 10% of surface area and cannot be easily removed by scraping	30
13 Texture (cooked product only)	Moderate Excessive	5 16

[49 FR 27515, July 5, 1984; 49 FR 37423, Sept. 24, 1984]

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SUBCHAPTER H—TUNA FISHERIES

PART 280—PACIFIC TUNA FISHERIES

Sec.
280.1 Definitions.
280.2 Basis and purpose.
280.3—280.16 [Reserved]
280.17 Recordkeeping and written reports.
280.18 Persons and vessels exempted.
280.19—280.20 [Reserved]

AUTHORITY: 64 Stat. 777, as amended October 15, 1962, 76 Stat. 923; 16 U.S.C. 951-961.

SOURCE: 49 FR 15209, Apr. 18, 1984, unless otherwise noted.

§ 280.1 Definitions.

The terms used in this part have the following meanings:

Act means the Tuna Conventions Act of 1950, 64 Stat. 777, as amended October 15, 1962, 76 Stat. 923; 16 U.S.C. 951-961.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commission means the Inter-American Tropical Tuna Commission established pursuant to the Convention.

Convention means the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, D.C., May 31, 1949, by the United States of America and the Republic of Costa Rica (1 U.S.T. 230).

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

Mingled species means—

(a) Any species of billfish or shark; or

(b) The following species of the family Scombridae: Skipjack (*Genus euthynnus*), bigeye tuna (*Thunnus obesus*), bluefin tuna (*Thunnus thynnus*) albacore (*Thunnus alalunga*), or Pacific bonito (*Sarda chiliensis*).

Yellowfin tuna means the species *Thunnus albacares.*

§ 280.2 Basis and purpose.

(a) At a special meeting held at Long Beach, California on September 14, 1961, the Commission recommended to the Governments of Costa Rica, Ecuador, Panama, and the United States of America, parties to the Convention, that they take joint action to limit the annual catch of yellowfin tuna from the eastern Pacific Ocean by fishermen of all nations during the calendar year 1962. This recommendation was made pursuant to paragraph 5 of Article II of the Convention on the basis of scientific investigations conducted by the Commission over a period of time dating from 1951. The most recent years of this period were marked by a substantial increase in fishing effort directed toward the yellowfin tuna stocks, resulting in a rate of exploitation of these stocks greater than that at which the maximum sustainable yield may be obtained. The Commission's recommendation for joint action by the parties to regulate the yellowfin tuna fishery has as its objective the restoration of these stocks to a level of abundance which will permit maximum sustainable catch and the maintenance of the stocks in that condition in the future.

(b) At each annual meeting held since 1962, the Commission affirmed its conclusions regarding the need for regulating the yellowfin tuna fishery in the eastern Pacific Ocean and at each meeting recommended to the parties to the Convention that they take joint action to:

(1) Establish a prescribed tonnage limit on the total catch of yellowfin tuna by the fishermen of all nations during each calendar year from an area of the eastern Pacific Ocean defined by the Commission;

(2) Establish open and closed seasons for yellowfin tuna under prescribed conditions.

(3) Permit the landing of an incidental catch by weight of yellowfin tuna when landed with one or more of the following fishes usually caught mingled with yellowfin tuna that are taken on a fishing trip begun after the close of the yellowfin tuna fishing season: Skipjack tuna, bigeye tuna, bluefin tuna, albacore tuna, bonito, the billfishes, and the sharks; and

(4) Obtain from governments not parties to the Convention, but having vessels which operate in the fishery, cooperation in effecting the recommended conservation measures.

(c) The regulations in this part are designed to implement the Commission's recommendations for the conservation of yellowfin tuna so far as they affect vessels and persons subject to the jurisdiction of the United States.

§§ 280.3—280.16 [Reserved]

§ 280.17 Recordkeeping and written reports.

(a) The master or other person in charge of a fishing vessel or a person authorized in writing to serve as the agent for either person must:

(1) Keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish aboard by species. The record and bridge log maintained at the request of the Commission shall be sufficient to comply with this paragraph provided the items of information specified are accurately entered in the log.

(b) Any authorized officer has the power to inspect without warrant or other process, at any reasonable time, the records and logs of any fishing vessel which are required by § 280.17(a)(1).

§ 280.18 Persons and vessels exempted.

Nothing contained in § 280.2 to § 280.18 applies to:

(a) Any person or vessel authorized by the Commission, the Assistant Administrator, or any State of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

§§ 280.19—280.20 [Reserved]

PART 281—RESTRICTIONS ON TUNA IMPORTS

Sec.

281.1 Definitions.
281.2 Basis and purpose.
281.3 Species subject to regulation.
281.4 Species under investigation by the Commission.
281.5 Investigations authorized.
281.6 Publication of findings.
281.7 Proof of admissibility.
281.8 Removal of import restrictions.

Authority: Sec. 6, 64 Stat. 778, as amended; 16 U.S.C. 955.

Source: 31 FR 16096, Dec. 15, 1966, unless otherwise noted.

§ 281.1 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean and to include:

(a) *United States.* All areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(b) *Convention.* The Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica (1 U.S.T. 230).

(c) *Commission.* The Inter-American Tropical Tuna Commission established pursuant to the Convention.

(d) *Bureau Director.* The Director of the Bureau of Commercial Fisheries, Fish and Wildlife Service, U.S. Department of the Interior.

(e) *Regulatory area.* All waters of the eastern Pacific Ocean bounded by the mainland of the Americas and the following lines: Beginning at a point on the mainland where the parallel of 40 degrees north latitude intersects the coast; thence due west to the meridian of 125 degrees west longitude; thence due south to the parallel of 20 degrees north latitude; thence due east to the meridian of 120 degrees west longitude; thence due south to the parallel of 5 degrees north latitude, thence due east to the meridian of 110 degrees west longitude; thence due south to the parallel of 10 degrees south latitude; thence due east to the meridian of 90 degrees west longitude; thence due south to the parallel of 30 degrees south latitude; thence due east to a point on the mainland where the parallel of 30 degrees south latitude intersects the coast.

(f) *Yellowfin tuna.* Any fish of the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

(g) *Other tuna fishes.* Those species (and none other) of the family Scombridae which are known as:

(1) Albacore—*Thunnus alalunga* (synonomy: *Thunnus germo*).

(2) Bigeye—*Thunnus obesus* (synonomy: *Parathunnus sibi*).

(3) Bluefin—*Thunnus Thynnus* (synonomy: *Thunnus saliens*).

(4) Skipjack—*Euthynnus pelamis* (synonomy: *Katsuwonus pelamis*).

(h) *Fishing vessel.* Every kind, type or description of watercraft (other than purse seine skiffs) used in or outfitted for catching or processing fish or transporting fish from fishing grounds.

(i) *Person.* Individual, association, corporation or partnership.

§ 281.2 Basis and purpose.

(a) At a special meeting held at Long Beach, Calif., on September 14, 1961, the Commission recommended to the Governments of Costa Rica, Ecuador, Panama, and the United States of America, parties to the Convention, that they take joint action to limit the annual catch of yellowfin tuna from the eastern Pacific Ocean by fishermen of all nations during the calendar year 1962. This recommendation was made pursuant to paragraph 5 of Article II of the Convention on the basis of scientific investigations conducted by the Commission over a period of time dating from 1951. The most recent years of this period were marked by a substantial increase in fishing effort directed toward the yellowfin tuna stocks, resulting in a rate of exploitation of these stocks greater than that at which the maximum sustainable yield may be obtained. The Commission's recommendation for joint action by the parties to regulate the yellowfin tuna fishery has as its objective the restoration of these stocks to a level of abundance which will permit maximum sustainable catch and the maintenance of the stocks in that condition in the future.

(b) At annual meetings held at Quito, Ecuador, May 16 to 18, 1962; at Panama City, Panama, April 16 to 17, 1963; at San Diego, Calif., March 18 to 19, 1964; at Mexico City, Mexico, March 23 to 24, 1965; and at Guayaquil, Ecuador, April 19 to 20, 1966, the Commission affirmed its earlier conclusions regarding the need for regulating the yellowfin tuna fishery in the eastern Pacific Ocean and at each meeting recommended to the parties to the Convention that they take joint action to:

(1) Establish a prescribed tonnage limit on the total catch of yellowfin tuna by the fishermen of all nations during each calendar year from an area of the eastern Pacific Ocean defined by the Commission:

(2) Establish open and closed seasons for yellowfin tuna under prescribed conditions:

(3) Permit the landing of not more than 15 percent (15%) by weight of yellowfin tuna among the tuna taken on a fishing trip made after the close of the yellowfin tuna fishing season; and

(4) Obtain from governments not parties to the Convention, but having vessels which operate in the fishery, cooperation in affecting the recommended conservation measures.

(c) In conformity with the provisions of section 6(c) of the Act and simultaneously with the adoption of the regulations in this part, the Secretary of the Interior has made effective Part 280 of this chapter for the purpose of carrying out the recommendations of the Commission for the conservation of yellowfin tuna in the regulatory area so far as such recommendations affect all vessels and persons subject to the jurisdiction of the United States.

(d) The yellowfin tuna stocks recommended for regulation by the Commission constitute a significant part of an international high seas fishery in which the vessels of a number of countries are engaged in varying degrees. Since some of the countries are not parties to the Convention and, therefore, have no applicable treaty obligations to fulfill, the achievement of the conservation objectives with respect to the tuna resources of the eastern Pacific Ocean is dependent upon international cooperative efforts to implement the Commission's recommendations. With a view toward encouraging effective cooperation on the part of such countries, the Tuna Conventions Act of 1950, as amended, directs that restrictions be established on the importation of certain tuna fish from any country which shall fail to take action to prevent the occurrence of certain proscribed activities. Thus, section 6(c) of the Act provides that the Secretary of the Interior, with the concurrence of the Secretary of State, shall promulgate regulations—

(1) To prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area; and

(2) To prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission.

(e) Section 6(c) of the Act further provides that "in the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the Commission and which were taken in the regulatory area."

(f) By letter of May 8, 1964, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to prescribe procedures for the establishment of restrictions on imports of tuna whenever such action shall be deemed warranted.

§ 281.3 Species subject to regulation.

The species of fish currently subject to regulation pursuant to a recommendation of the Commission within the meaning of section 6(c) of the Act is yellowfin tuna.

§ 281.4 Species under investigation by the Commission.

The species of fish currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin tuna, skipjack tuna, and bigeye tuna.

§ 281.5 Investigations authorized.

(a) The Bureau Director shall cause to be made from time to time such inquiries and investigations as may be necessary to keep himself and other persons concerned currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being carried out by countries whose vessels engage in fishing within the regulatory area. In making a finding as to whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, The Bureau Director shall take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(1) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis.

(2) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations.

(3) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulation which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations.

(4) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures.

(5) The number of vessels of the country which conduct fishing operations in the regulatory area.

(6) The quantity of species subject to regulation taken from the regulatory area by the country's vessels contrary to the Commission's conservation recommendations and its relationship to (i) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (ii) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(7) Whether or not repeated and flagrant fishing operations in the regulatory area by the vessels of the country seriously threaten the achievement of the objectives of the Commission's recommendations.

(b) Any person who shall have reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Tuna Conventions Act of 1950 as amended, are occurring or are likely to occur, may communicate his belief to the Bureau Director. Every such communication shall contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may support the belief, and such other pertinent facts as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Bureau Director of any communication submitted pursuant to paragraph (b) of this section and found to comply with the requirements of that paragraph, the Bureau Director promptly shall cause such investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigation the Bureau Director or his designated representative shall consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary shall exist, every such investigation shall be completed within 60 days following receipt of the communication.

§ 281.6 Publication of findings.

If it shall be determined on the basis of § 281.5 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States from a particular country pursuant to the provisions of section 6(c) of the Act, the Bureau Director, with the approval of the Secretary of the Interior and, when required by law, with the concurrence of the Secretary of State, shall publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry either directly or indirectly from the country named in the finding shall be denied entry unless it shall be established by satisfactory proof pursuant to § 281.7 that a particular shipment of such fish is not ineligible for entry: *Provided*, That entry shall not be denied and no such proof shall be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

§ 281.7 Proof of admissibility.

(a) For the purposes of § 281.6 of this part and section 8(c) of the Tuna

Conventions Act of 1950, as amended, a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under such § 281.6 shall be deemed to be eligible for entry if the shipment is accompanied by a certificate of eligibility certifying, as may be appropriate, that the tuna in the shipment:

(1) Are not of the species specified in the published finding; (2) are of the species named in the published finding but were not taken in the regulatory area; or (3) are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

CERTIFICATE OF ELIGIBILITY

I, ————————, an authorized officer of the Government of ————————, certify that the shipment of tuna fish accompanied by this certificate, consisting of ———— (Quantity) of ———————— (Species) in ———————————— (Number and kind of packages or containers) bearing the following marks and numbers ————————————:

☐ (a) Contains no tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended. [A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.]

☐ (b) Contains tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended, but that such fish were caught in the waters of ————————————

————————————————————————

(Identify area or areas in which fish were taken) by vessels subject to the jurisdiction of ———— (Country), and that none of the said fish were taken in any part of the eastern Pacific Ocean subject to conservation regulations pursuant to recommendations of the Inter-American Tropical Tuna Commission. [A certificate of authentication executed by a consular officer or consular agent of the United States must be attached.]

☐ (c) Contains tuna fish of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Tuna Conventions Act of 1950, as amended, but that such fish, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. [Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent of the United States and the declaration(s) required by 19 C.F.R. 10.79 must be attached.]

————————————————
(Signature)

————————————————
(Title)

————————————————
(Address)

(b) If the tuna fish are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

————————
———————— ss:
————————
————————

I, ———————————— (Name of consular officer or consular agent), ———— (Title) of the United States of America at ———— (Place), duly commissioned and qualified, do hereby certify that ———————————— (Name of foreign official) whose true signature and official seal are, respectively, subscribed and affixed to the annexed certificate, was, on the ———— day of————, 19——,

the date thereof, ————————————.
(Title of foreign official) duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the ———————— at ————————
this ———————— day of ————————, 19—.

————————————
(Signature)

————————————————————
(Name and full title of officer)

(c) If the tuna fish are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries," required by 19 CFR 10.79, must contain a further statement as follows: "We further declare that the said tuna fish were caught by use in full compliance with Part 280, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

§ 281.8 Removal of import restrictions.

Upon a determination by the Bureau Director that the conditions no longer exist which warranted the imposition of import restrictions against the country named in the finding published pursuant to § 281.6, the Bureau Director, with the approval of the Secretary of the Interior, shall publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein shall terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form of the species subject to regulation or under investigation by the Commission shall continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish which are of species under regulation and which were prohibited from entry under the prior existing import restrictions.

PART 285—ATLANTIC TUNA FISHERIES

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AUTHORITY: 16 U.S.C. 971 *et seq.*

Subpart A—General

SOURCE: 48 FR 27755, June 17, 1983, unless otherwise noted.

§ 285.1 Purpose and scope.

(a) The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 through 971h) authorizes the Secretary to implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Secretary's authority under the Act has been delegated to the Assistant Administrator.

(b) This part implements the ICCAT recommendations for persons and vessels subject to the jurisdiction of the United States.

(c) This part does not apply to any person or vessel authorized by the Commission, the Regional Director, the Director of the Southeast Fisheries Center, or any State upon approval by the Regional Director, to engage in fishing for research purposes.

(d) Under section 9(d) of the Act, determinations made by the Assistant Administrator that the provisions of this part apply within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Texas, Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Rhode Island, Massachusetts, New Hampshire, and the Commonwealths of Puerto Rico and the Virgin Islands, and, with the exceptions of §§ 285.22 (c) and (d), 285.23 (a) and (b) and 285.25 within the territorial sea of the United States adjacent to, and within the boundaries of the State of Maine, continue in effect.

§ 285.2 Definitions.

The terms used in this part have the following meanings (definitions in the Act are repeated here to aid understanding of the rules):

"*Act*" means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 through 971h.

"*Albacore*" means the fish species *Thunnus alalunga.*

"*Angling*" means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line which is hand held or by rod and reel made for this purpose.

"*Assistant Administrator*" means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

"*Atlantic bluefin tuna*" means the fish species *Thunnus thynnus thynnus.* Size classes for Atlantic bluefin tuna are defined in § 285.26.

"*Atlantic bonito*" means the fish species *Sarda chiliensis* or *Sarda sarda.*

"*Authorized Officer*" means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement agent or Special Agent of the NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

"*Bigeye tuna*" means the fish species *Thunnus obesus.*

"*Buy-boat*" means any vessel used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for any tuna.

"*Cargo vessel*" means any fishing vessel used for transporting fish or fish products.

"*Commercial activity*" means any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species and activities conducted for the purpose of facilitating such buying and selling.

"*Commission*" means the International Commission for the Conservation of Atlantic Tunas established under Article III of the Convention.

"Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

"*Dealer*" means any person who engages in a commercial activity with respect to a regulated species or parts thereof.

"*Dressed weight*" means the weight of a fish after it has been gilled, gutted, beheaded, and definned.

"*Fish*" or "*fishing*" means the catching or fishing for, or the attempted catching or fishing for, any species of fish covered by the Convention, or any activities in support of fishing.

"*Fishing trip*" means the time period between when a fishing vessel departs from port to carry out fishing operations and the time such vessel returns to port or offloads any of its catch.

"*Fishing vessel*" means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

"*Fishing week*" means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time on the following Saturday.

"*Fork length*" means a measurement of the length of Atlantic bluefin tuna taken in a straight line along the middle of the lateral surface from the tip of the snout to the fork of the tail.

"*Handgear*" means handline, harpoon, or rod and reel.

"*Handline*" or "*handline gear*" means fishing gear which is released by hand and consists of one main line of variable length to which is attached one or two leaders and hooks. Handlines are retrieved only by hand, and not by mechanical means.

"*Longline*" or "*longline gear*" means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or groundline with three or more gangions and hooks. A longline may be retrieved by hand or mechanical means.

"*Metal tag*" means the flexible, selflocking ribbon of metal issued by the NMFS for the identification of Atlantic bluefin tuna under § 285.30.

"*Metric ton*" (mt) means 2204.6 pounds (1000 kilograms).

"*NMFS*" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

"*Person*" means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

"*Plastic tag*" means the plastic or combination plastic and metal marker issued for the tag and release program under § 285.27.

"*Purse seining*" means fishing for or catching a regulated species by means of an encircling net and associated gear.

"*Regional Director*" means—

(a) For purposes of Atlantic bluefin tuna, the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930-3799; and

(b) For purposes of yellowfin tuna, the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

"*Regulated species*" means albacore, Atlantic bluefin tuna, bigeye tuna, skipjack tuna, or yellowfin tuna.

"*Regulatory area*" means all waters of the Atlantic Ocean including adjacent seas, except the waters over which the individual States exercise fishery management jurisdiction unless the Assistant Administrator has determined otherwise in accordance with this part, as noted in § 285.1(d).

"*Reporting week*" means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time the following Saturday.

"*Round*" or "*round weight*" means a fish or the weight of a fish before gilling, gutting, beheading, and definning.

"*Secretary*" means the Secretary of Commerce or an individual to whom appropriate authority has been delegated.

"*Short ton*" (st) means 2,000 pounds (907 kilograms).

"*Skipjack tuna*" means the fish species *Katsuwonus* (= *Euthynnus*) *pelamis*.

"*State*" means any State of the United States, the District of Columbia, the Commonwealths of Puerto Rico and the Virgin Islands, and territories and possessions of the United States.

"*Tuna*" means albacore, Atlantic bluefin tuna, bigeye tuna, skipjack tuna or yellowfin tuna.

"*Yellowfin tuna*" means the fish species *Thunnus albacares*.

§ 285.3 Prohibitions.

It is unlawful—

(a) For any person in charge of a fishing vessel or for any fishing vessel subject to the jurisdiction of the United States to engage in fishing or to land any tuna in violation of these rules.

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which the person knows, or should have known, was taken or retained contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel which took the fish.

(c) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish reports required by this part.

(d) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to obstruct or to refuse to allow any authorized officer to enter the dealer's premises or to board the fishing vessel to search or inspect its catch, equipment, books, documents, records, or other articles, or to question the persons in the dealer's premises or onboard the fishing vessel under the provisions of this part.

(e) For any person to import from any country any regulated species in any form subject to regulation under a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry under this part.

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, or with the head removed.

[48 FR 27755, June 17, 1983, as amended at 48 FR 35107, Aug. 3, 1983]

§ 285.4 Enforcement.

(a) The Secretary, the Secretary of the Department in which the U.S. Coast Guard is operating, and the U.S. Customs Service shall enforce jointly this part and the provisions of the Act.

(b) Enforcement Agents of the NMFS shall enforce provisions of this part and the Act on behalf of the Secretary and may take any actions authorized with respect to enforcement. By agreement, the Secretary may utilize the personnel, services, and facilities of any other Federal Agency to enforce these rules and the Act. By agreement, the Secretary also may designate personnel of a State to enforce these rules and the Act.

(c) The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Act and this part.

(d) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency rediotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed

at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(e) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(f) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.-/.-)[1, 2] is the call to an unkown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-./-.-- / -.-./-.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (.../--.-/...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[48 FR 27755, June 17, 1983; 48 FR 33001, July 20, 1983, as amended at 49 FR 29798, July 24, 1984]

§ 285.5 Civil procedures.

(a) The method for assessment of civil penalties for violation of these rules or the Act must be in accordance with the procedures set forth in 15 CFR Part 904.

(b) Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including sale by the government of seized tuna.

[48 FR 27755, June 17, 1983, as amended at 50 FR 12785, Apr. 1, 1985]

§ 285.6 Civil penalties.

Any person who—

(a) Violates any provision of § 285.3 (a) or (b) of this part shall be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for any subsequent violation;

(b) Violates any provisions of § 285.3 (c) or (d) of this part shall be assessed a civil penalty of not more than $1,000 for a first violation and a civil penalty of not more than $5,000 for any subsequent violation; or

(c) Violates any provision of § 285.3(e) shall be assessed a civil penalty of not more than $100,000.

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[1] Period (.) means a short flash of light.

[2] Period (-) means a long flash of light.

Subpart B—Atlantic Bluefin Tuna

(Thunnus thynnus thynnus)

§ 285.20 Fishing seasons.

(a) *Commencement.* Fishing in the regulatory area for Atlantic bluefin tuna will begin—

(1) On January 1 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(d),

(ii) For anglers fishing for young school, school, and medium Atlantic bluefin tuna under the quota specified in § 285.22(e),

(iii) For vessels permitted in the Incidental Catch category fishing under the quota specified in § 285.22(f), and

(iv) For anglers participating in the tag and release program under § 285.27.

(2) On June 1 of each year:

(i) For vessels permitted in the General category fishing under the quota specified in § 285.22(a), and

(ii) For vessels permitted in the Harpoon Boat category fishing under the quota specified in § 285.22(b).

(3) On August 15 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(c).

(ii) [Reserved].

(4) Consistent with the Convention, the Act and this part, the Assistant Administrator may change the commencement date under this section for any vessel permit category or person (angler) if the Assistant Administrator determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being caught, based upon historical catch data or other relevant information. The Assistant Administrator will publish a notice in the FEDERAL REGISTER of any change in the commencement date(s) for fishing under this section at least 60 days before commencement of the affected fishery.

(b) *Closure.* (1) The Assistant Administrator will monitor catch and landing statistics of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22, and will publish a notice in the FEDERAL REGISTER stating that fishing for or retaining Atlantic bluefin tuna under that quota must cease on that date at a specified hour.

(2) Angling for Atlantic bluefin tuna under a tag and release program under § 285.27 may continue even after fishing for a quota has ceased.

(3) Any vessels permitted in the Purse Seine category may fish under the quotas specified in § 285.22(c) and § 285.22(d) only until the allocation(s) assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation for a particular size class of Atlantic bluefin tuna, a vessel will be deemed to have been given notice that the fishery for such tuna is closed to that vessel.

(c) *State actions.* Nothing in this section shall be construed to invalidate any more restrictive commencement or closure date established by any State in waters under its jurisdiction.

[48 FR 27755, June 17, 1983; 48 FR 33001, July 20, 1983]

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel which fishes for or takes Atlantic bluefin tuna, except vessels being used by anglers fishing for young school, school, or medium Atlantic bluefin tuna under § 285.24(c), must have an appropriate permit issued under this section.

(b) *Categories of permits.* The Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. Anglers also may fish for young school, school, and medium Atlantic bluefin tuna from a vessel that has a permit for other types of fishing, but anglers will remain subject to provisions of this subpart applicable to angling. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22 (c) and (d) only to owners of those purse seine vessels, or their replacements, which were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel which was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the length of the vessel, the tonnage (if known), the area to be fished, and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year regardless of any change in the vessel's ownership.

(d) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under this section remains valid until it is suspended, revoked, or expires. Except with respect to purse seine permits, a permit issued under this section expires when the owner or name of the vessel changes.

(f) *Alteration.* A permit issued under this section which is substantially altered, erased, or mutilated is invalid.

(g) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(h) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the vessel and/or owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried on board the vessel at all times. The permit must be displayed for inspection upon request of any Authorized Officer or any employee of the NMFS designated by the Regional Director for such purpose.

(j) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought pursuant to this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit issued under this section.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing to the Regional Director.

(Approved by the Office of Management and Budget under control number 0648-0097)

[48 FR 27755, June 17, 1983; 48 FR 33001, July 20, 1983, as amended at 49 FR 1043, Jan. 6, 1984; 49 FR 29799, July 24, 1984]

§ 285.22 Quotas.

The total annual amount of Atlantic bluefin tuna which may be caught and retained by persons and vessels subject to U.S. jurisdiction in the regulatory area is 1,529 st (1,387 mt), subdivided as follows:

(a) *General.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the General category under § 285.21(b) is 650 st (590 mt). If the Assistant Administrator determines (based on dealer reports, availability of giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 50 st or the maximum reported landings in the identified area in any of the preceeding three years. The daily catch rate limit for the identified area will be set at one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator will publish a notice of any allocation and its basis in the FEDERAL REGISTER.

(b) *Harpoon-boat.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 60 st (54 mt).

(c) *Purse Seine—Giants.* The total amount of giant Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 325 st (295 mt).

(d) *Purse Seine—School fish.* The total amount of Atlantic bluefin tuna less than 120 cm fork length (47 inches) which may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 100 st (91 mt). See § 285.23(b) for further clarification.

(e) *Angling.* The total amount of young school, school, and medium Atlantic bluefin tuna which may be caught and retained in the regulatory area by anglers is 139 st (126 mt). No more than 89 st (81 mt) of this quota may be fish less than 120 cm (47 inches) fork length.

(f) *Incidental.* The total amount of Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 151 st (137 mt). This quota is further subdivided as follows:

(1) 145 st (132 mt) for longline vessels. No more than 115 st (104 mt) may be taken in the area south of 36°00′ N. latitude.

(2) 6 st (5 mt) for vessels fishing for species of fish other than tuna.

(g) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna which will be held in reserve for inseason adjustments is 104 st (94 mt). The Assistant Administrator may allocate any portion (from zero to 100 percent) of this amount to any segment or segments of the fishery. The Assistant Administrator will publish a notice of allocation of any inseason adjustment amount in the FEDERAL REGISTER before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular gear segment of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(h) The catching or retention of young school, school, or medium Atlantic bluefin tuna is prohibited except as allowed by paragraphs (d), (e), and (f) of this section.

[48 FR 27757, June 17, 1983, as amended at 48 FR 35107, Aug. 3, 1983; 49 FR 29799, July 24, 1984]

§ 285.23 Incidental catch.

(a) Subject to the quota in § 285.22(c), purse seine vessels permitted in the purse seine category under § 285.21 and fishing for giant Atlantic bluefin tuna may catch incidentally, during any fishing trip, Atlantic bluefin tuna with a fork length less than 77 inches, provided that the total amount of such tuna taken does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna onboard the vessel at the end of each fishing trip.

(b) Subject to the quota in § 285.22(d) and individual vessel allocations, purse seine vessel permitted in the purse seine category under § 285.21 and fishing for tunas other than Atantic bluefin tuna may catch incidentally and retain, during any fishing trip, Atlantic bluefin tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 10 percent by weight of all other tuna species onboard the vessel at the end of each fishing trip. Any vessel that has not taken its allocation under § 285.22(d) at the seasonal termination of the vessel's fishing for species of tuna other than Atlantic bluefin tuna, may add the remainder of its allocation to the vessel's allocation of giant Atlantic bluefin tuna under § 285.22(c).

(c) *Attribution.* Atlantic bluefin tuna caught incidentally by purse seine vessels fishing for an allocation of a particular size class of Atlantic bluefin tuna will be applied to that vessel's allocation for such size class Atlantic bluefin tuna.

(d) *Herring, mackerel, and menhaden purse seine vessels and vessels using fixed gear other than longlines or traps (pounds, weirs, and gillnets).* Subject to the quotas in § 285.22, any person operating a vessel fishing with these types of gear principally for species of fish other than tuna and possessing an Incidental Catch permit issued under § 285.21 may catch, during any fishing trip, Atlantic bluefin tuna of any size class, provided that, the total amount of Atlantic bluefin tuna taken does not exceed two percent, by weight, of all other fish onboard the vessel at the end of each fishing trip.

(e) *Traps.* Subject to the quotas in § 285.22, any person operating a vessel possessing an Incidental Catch permit issued under § 285.21 which catches Atlantic bluefin tuna incidentally while fishing with traps, may retain Atlantic bluefin tuna, provided, that such tuna do not exceed two percent, by weight, of the total amount of all other fish species caught within the preceding 30-day period.

(f) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may land Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna may not exceed:

(1) Two fish per vessel per trip south 36°00′ N. latitude, and

(2) Two percent by weight of all other fish onboard the vessel at the end of each fishing trip, north of 36°00′ N. latitude.

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear in the Gulf of Mexico and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report within 24 hours of landing his/her giant Atlantic bluefin tuna to the nearest NMFS enforcement office, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

[48 FR 27757, June 17, 1983; 48 FR 33001, July 20, 1983]

§ 285.24 Catch rate limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b), may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator, on or about September 1, may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availablity of the species on the fishing grounds, and any other relevant factors to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the FEDERAL REGISTER of any adjustment in the allowable daily catch rate limit made under this paragraph. Operators of vessels permitted in the General category may possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch rate limit in effect at the that time.

(b) Vessels permitted in the Harpoon Boat category are not restricted in their catch rate of giant Atlantic bluefin tuna.

(c) Persons angling in the regulatory area may catch and retain no more than four Atlantic bluefin tuna other than giant Atlantic bluefin tuna each day, only one of which may be a medium: provided that no more than four medium Atlantic bluefin tuna per day may be caught and retained per vessel for vessels having four or more anglers onboard.

[48 FR 27757, June 17, 1983, as amended at 49 FR 29799, July 24, 1984]

§ 285.25 Purse seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a vessel with a permit issued under § 285.21(b) conducting a directed fishery for Atlantic bluefin tuna with nets, other than a trap net, must use a purse seine net with a mesh size equal to or smaller than 4.5 inches in the main body (stretched when wet) and which has at least 24 count thread throughout the net.

(b) *Exemption.* The Regional Director may exempt any person from the mesh restrictions in paragraph (a) of this section if it is determined that the net sought to be exempted will not result in significant injury or mortality to Atlantic bluefin tuna which are encircled by the net but manage to escape.

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of the NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or offloading by calling 617-281-3600 extension 252; or 617-563-5721. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transport from the area of offloading.

(d) *Vessel allocations.* (1) Purse seine vessel permit holders must apply for an allocation of Atlantic bluefin tuna from the quotas specified in § 285.22 (c) and (d). The permit holder must apply for this allocation in writing to the Regional Director by June 1, 1983, and by April 15 of subsequent years. The permit holder must specify the particular size class or classes of Atlantic bluefin tuna for which the vessel will fish. The owner must supply documentation of the vessel's stockholders, owners, partners, or association structure.

(2) The Regional Director will review these applications for allocations of Atlantic bluefin tuna by June 15, 1983, and by May 1 in subsequent years, and will make equal allocations of the available size classes of Atlantic bluefin tuna among the vessels permitted under § 285.21(b). Such allocations are freely transferable among purse seine vessel permit holders. Any purse seine vessel permit holder intending to fish for more than one allocation in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their allocation to another purse seine vessel permit holder must not fish their permitted vessel in any fishery in which Atlantic bluefin tuna might be caught.

[48 FR 27757, June 17, 1983, as amended at 49 FR 29799, July 24, 1984]

§ 285.26 Size classes.

For any Atlantic bluefin tuna which is landed with the head removed, it is a rebuttable presumption for purposes of this subpart that the tuna, when caught, fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from the forwardmost part of the beheaded fish to the fork of the tail. The fork length measurement will be the sole criterion for determining the size class of an individual Atlantic bluefin tuna. Approximate round weights in the table are given for illustrative purposes only.

Original size class (fork length)	Approximate round weights	Length with head off
Young school tuna. Less than 26 inches (66 cm)	Less than 14 pounds	Less than 18 inches (46 cm)
School tuna. Equal to 26 inches (66 cm) but less than 57 inches (145 cm)	From 14 pounds but less than 135 pounds	18 inches (46 cm) but less than 40 inches (102 cm)
Medium tuna. Equal to 57 inches (145 cm) but less than 77 inches (196 cm)	From 135 pounds but less than 310 pounds	40 inches (102 cm) but less than 54 inches (137 cm)
Giant tuna. 77 inches (196 cm) or more	310 pounds or more	54 inches (137 cm) or more

[48 FR 27757, June 17, 1983, as amended at 49 FR 29799, July 24, 1984]

§ 285.27 Tag and release program.

Notwithstanding other provisions of these rules, an angler may fish for Atlantic bluefin tuna under a tag and release program, provided the angler tags all Atlantic bluefin tuna so caught with plastic tags issued under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. To participate in this program, an angler must obtain plastic tags, reporting cards, and detailed instructions for their use by writing to the Cooperative Game Fish Tagging Program, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149-1099.

(Approved by the Office of Management and Budget under OMB control number 0648-0031)

[48 FR 27757, June 17, 1983]

§ 285.28 Dealer permits.

(a) *General.* A dealer purchasing or receiving Atlantic bluefin tuna from any person or vessel which catches such tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy boat, the buy boat must have a valid permit under paragraph (l) of this section.

(b) *Application.* An applicant must apply for a dealer permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address, and telephone number of the applicant.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director shall issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any Authorized Officer, or any employee of the NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought pursuant to this section. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(j) *Fees.* No fee is required for any permit issued under this section.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Buy-boats.* Each buy-boat must have a dealer permit issued under this section. The Regional Director will not issue a dealer permit under this section for a buy-boat operation to any vessel which has a valid fishing vessel permit issued under § 285.21. The Regional Director will not issue a dealer permit to a buy-boat unless the owner or operator of the buy-boat agrees in writing to allow an individual authorized by the Regional Director to accompany the buy-boat on any trip to observe operations. The Regional Director will provide reasonable notice to the owner or operator of any buy-boat that an individual will be placed on board. The Regional Director will reimburse the owner of any buy-boat for any expenses which the Regional Director determines to be reasonable and which are related directly to the placement of an individual on that buy-boat.

(Approved by the Office of Management and Budget under OMB control number 0648-0097)

[48 FR 27757, June 17, 1983, as amended at 49 FR 1043, Jan. 6, 1984; 49 FR 29799, July 24, 1984; 49 FR 39852, Oct. 11, 1984]

§ 285.29 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 285.28—

(a) Must submit to the Regional Director a daily report on a reporting card provided by the NMFS, within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an Authorized Officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by the NMFS, within two days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: the number of tuna purchased or received; location where each tuna was caught; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); date; metal tag numbers (where applicable); round or dressed weight and fork length (by individual tuna); and any other information requested by the Regional Director. Also, dealers using buy-boats, in addition to the information required above, must include the precise time when any tuna were received on the buy-boat;

(c) Must allow an Authorized Officer, or any employee of the NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic bluefin tuna;

(d) Must retain in his/her possession a copy of each weekly report for a period of two years from the date on which it was submitted to the Regional Director.

(e) Each operator of a buy-boat, in addition to the above, must notify the Regional Director of any offloading, and must request a vessel inspection at least six hours before such offloading by calling 617-281-3600, extension 252, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 617-992-7711. In making the request for inspection, the owner or operator of the buy-boat or his/her designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(Approved by the Office of Management and Budget under OMB control number 648-0013)

[48 FR 27757, June 17, 1983]

§ 285.30 Metal tags.

(a) *Issuance of tags.* The Regional Director will issue numbered metal tags to each person receiving a dealer's permit under § 285.28.

(b) *Transfer of tags.* Tags issued under this section are not transferable.

(c) *Affixing tags.* (1) A dealer or his/her agent must affix a metal tag to each medium or giant Atlantic bluefin tuna immediately upon its offloading from a vessel. He/she must affix the metal tag to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are: Portland, Maine (207-780-3241); Otis Air Force Base, Massachusetts (617-563-5721); Upton, New York (516-282-3267); Miami, Florida (305-350-4132); St. Petersburg, Florida (813-893-3841); New Orleans, Louisiana (504-589-4538); or Corpus Christi, Texas (512-888-3360).

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag must be attached to the outside of the package or container and the tag number must be written legibly and indelibly on the outside of any package or container.

[48 FR 27757, June 17, 1983, as amended at 49 FR 29799, July 24, 1984]

§ 285.31 Prohibitions.

It is unlawful for any person or vessel subject to the jurisdiction of the United States—

(a) To fish for or catch Atlantic bluefin tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(b) To fish for or catch Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

(c) To fish for, catch, or possess Atlantic bluefin tuna in excess of the quotas specified in § 285.22 except under the provisions of § 285.27;

(d) To fish for, catch, or possess Atlantic bluefin tuna in excess of the catch limits specified in § 285.24 except under the provisions of § 285.27;

(e) To fish for or catch Atlantic bluefin tuna in excess of any vessel allocation made under § 285.25(d);

(f) To fish for or catch Atlantic bluefin tuna in a directed fishery with purse seine nets without an allocation made under § 285.25(d);

(g) To fish for or catch Atlantic bluefin tuna in a directed fishery with nets other than those specified in § 285.25;

(h) To fish for or catch Atlantic bluefin tuna within 100 yards (91.5 meters) of the cork line of a purse seine net used by a vessel conducting scientific research operations authorized by the NMFS;

(i) To catch and retain Atlantic bluefin tuna in excess of the incidental catch provisions under § 285.23;

(j) To land any Atlantic bluefin tuna in forms other than round, or with the head removed;

(k) To retain any Atlantic bluefin tuna caught under the tag and release program allowed under § 285.27;

(l) To purchase, receive, or transfer Atlantic bluefin tuna from any person or vessel without a valid dealer permit issued under § 285.28(a);

(m) To purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 285.28;

(n) To sell, offer for sale, or transfer any Atlantic bluefin tuna to any person or vessel other than to a person or vessel with a permit issued under § 285.28;

(o) To sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally in the Gulf of Mexico with rod and reel gear under § 285.23(g);

(p) To engage in fishing with a vessel holding a permit under § 285.21 unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings under control (secured to the catching vessel or boated) any Atlantic bluefin tuna with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

(q) To fail to release immediately with a minimum of injury any Atlantic bluefin tuna which will not be retained;

(r) To fail to affix immediately to any medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered metal tag when the tuna has been received or purchased by that person for a commercial purpose from any person or vessel having caught such tuna;

(s) To remove any metal tag affixed to an Atlantic bluefin tuna under § 285.30 before removal is allowed under that section, or fail to write the tag number on the shipping package or container as prescribed by that section;

(t) To purchase or transport with a buy-boat any Atlantic bluefin tuna captured incidentally by longlines;

(u) To begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic bluefin tuna without first requesting an inspection of the vessel in accordance with § 285.25;

(v) To fail to report the catching of any Atlantic bluefin tuna to which a plastic tag has been affixed under a bona fide tag and release program conducted by the NMFS or any other recognized scientific organization;

(w) To falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(x) To refuse to allow an Authorized Officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic bluefin tuna required by this subpart;

(y) To make any false statement, oral or written, to an Authorized Officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic bluefin tuna;

(z) To fish for or catch Atlantic bluefin tuna with longline gear except as provided in § 285.23(f);

(aa) To fish for or catch Atlantic bluefin tuna with longline gear, or while having longline gear on board, if the vessel is permitted in the General category under § 285.21;

(bb) To fish for or catch young school, school, and medium sized Atlantic bluefin tuna with gear other than hook and line, which is hand held, or rod and reel made for this purpose or except as allowed by § 285.23(a) through (f);

(cc) To use or possess handline or harpoon flotation gear which is not marked in accordance with § 285.33, or is marked with the Atlantic bluefin tuna permit number of another vessel; or

(dd) To violate any other provision of this subpart, the Act, or any other rules promulgated under the Act.

[48 FR 27757, June 17, 1983, as amended at 48 FR 35107, Aug. 3, 1983; 49 FR 29799, July 24, 1984; 49 FR 34510, Aug. 31, 1984]

§ 285.32 Civil penalties.

(a) Any person who violates paragraphs (a) through (u) inclusive, or paragraphs (x) through (cc), inclusive, of § 285.31 will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(b) Any person who violates paragraphs (v) or (w), of § 285.31 shall be assessed a civil penalty of not more than $1,000, and a civil penalty of not more than $5,000 for a subsequent violation.

(c) Any person who violates paragraph (dd) of § 285.31 will be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

[48 FR 27757, June 17, 1983, as amended at 49 FR 29800, July 24, 1984]

§ 285.33 Gear identification.

Any flotation device atached to handline or harpoon gear must be marked with the Atlantic bluefin tuna permit number of the vessel from which it is used. The required markings must be permanently affixed and at least one inch in height in block Arabic numerals of a color that contrasts with the background color of the flotation device.

[49 FR 29800, July 24, 1984]

Subpart C—Yellowfin Tuna (*Thunnus albacores*) and Bigeye Tuna (*Thunnus obesus*)

§ 285.50 Authorized fishing.

Except as provided in § 285.52, fishing in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna that weigh seven pounds round weight (3.2 kg.) or more. The prohibition against fishing for bigeye tuna less than seven pounds is to remain in effect until December 31, 1983.

[46 FR 3026, Jan. 13, 1981]

§ 285.51 Open and closed seasons. [Reserved]

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.52 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States may take yellowfin tuna or bigeye tuna or both that weigh less than seven pounds round weight incidental to authorized fishing in the regulatory area for yellowfin tuna or bigeye tuna with the following provision. Landing of incidental catch shall not exceed 3 percent by weight per trip of all yellowfin tuna and bigeye tuna weighing seven pounds or more.

[46 FR 3026, Jan. 13, 1981]

§ 285.53 Recordkeeping.

(a) Any person in charge of a fishing vessel, or any master or other person in charge of a fishing vessel subject to the jurisdiction of the United States or any person as may be authorized in writing to serve as the agent of such person or master, shall:

(1) Keep an accurate log of all operations conducted from the vessel, entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of tuna aboard by species. The record and bridge log shall be sufficient to comply with this paragraph, provided however, that the items of information specified herein are fully and accurately entered in such log; and

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of tuna made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of tuna sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. In addition, any vessel landing its catch in California may satisfy the requirements of this paragraph by submitting an official copy of the California fish ticket. Such sale and delivery reports shall be delivered or mailed to the Regional Director within 72 hours after weighout has been completed.

(b) Any person authorized to carry out enforcement activities under the Act or these regulations shall have power, without warrant or other process, to inspect, at any reasonable time, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.54 Reporting requirements.

(a) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to

Puerto Rico or to any other U.S. Port for unloading, shall report to the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. In addition, any person in charge of a fishing vessel or any Master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish aboard, shall notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report shall include the name of the reporting vessel, the tonnage by species aboard, and whether the fish were caught in Pacific or Atlantic waters.

(b) All such fishing vessels entering or leaving the regulatory area via the Panama Canal shall be subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals shall be removed only by a designated agent of the National Marine Fisheries Service, upon the arrival at point of sale or delivery.

(c) Any person in charge of a fishing vessel or any Master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, shall notify the Regional Director not less than 48 hours prior to any transfer of yellowfin tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports shall include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(d) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States shall be a prohibited act within the meaning of § 285.3 of this part.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

Subpart D—Restrictions on Tuna Imports

§ 285.80 Basis and purpose.

(a) The stocks of Atlantic tunas under investigation and regulation by the Commission represent the concern of a number of countries interested in the conservation of such stocks. In order to assure that the achievement of the conservation objectives of the Commission are fulfilled the Act provides for certain restrictions on the importation of Atlantic tunas. Pursuant to section 6(c) of the Act, the Secretary, with the concurrence of the Secretary of State, is directed to promulgate regulations to prohibit:

(1) The entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(2) The entry into the United States, from any country when vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area;

(3) The entry into the United States, from any country when vessels of such country engage in repeated and flagrant fishery operations in the regulatory area which seriously threaten the achievement of the objectives of the Commission's recommendations, of fish in any form of these species which are under investigation by the Commission and which were taken from the regulatory area.

(b) By letter of February 18, 1976, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to

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import controls and to proscribe procedures for the establishment of restrictions on imports of tuna and tuna-like fish whenever such action shall be deemed warranted.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.81 Species subject to regulation.

The species of tuna currently subject to regulation by recommendation of the Commission within the meaning of section 6(c) are yellowfin tuna, bigeye tuna, and Atlantic bluefin tuna.

[46 FR 3026, Jan. 13, 1981]

§ 285.82 Species under investigation by the Commission.

Those species of tuna currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin, Atlantic bluefin, skipjack, albacore, bigeye and Atlantic bonito, and billfishes.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.83 Investigations authorized.

(a) The Assistant Administrator shall cause to be made, from time to time, such inquiries and investigations as may be necessary to keep himself and other interested persons currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations concerning those activities which are being carried out by foreign countries whose vessels engage in fishing within the regulatory area. In making a finding, as to:

(1) Whether or not fish in any form of those species which are subject to regulation by the Commission are being taken from the regulatory area in a manner or under such circumstances as would tend to diminish effectiveness of the conservation recommendations of the Commission; or

(2) Whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such a manner or under such circumstances that would tend to diminish the effectiveness of the conservation recommendations of the Commission; or

(3) Whether or not a country is condoning the use of vessels in repeated and flagrant fishing operations which seriously threaten the achievement of the objectives of the commissions recommendations, the Assistant Administrator shall take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(i) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis;

(ii) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for the implementation of the Commission's recommendations;

(iii) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulations which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations;

(iv) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures;

(v) The number of vessels of the country which conduct fishing operations in the regulatory area;

(vi) The quantity of species subject to regulation taken from the regulatory area by the Country's vessels contrary to the Commission's conservation recommendations and its relationship to (A) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (B) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(b) Any person who shall have reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Act, are occurring or are likely to occur, may communicate his belief to the Assistant Administrator. Every such communication shall contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Assistant Administrator of any communication submitted pursuant to paragraph (b) of this section and upon a finding that the communication complies with the requirements of that paragraph, the Assistant Administrator promptly shall cause such investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigations the Assistant Administrator or his designated representative shall consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary shall exist, every such investigation shall be completed within 60 days following receipt of the communication.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979]

§ 285.84 Publication of findings.

If it shall be determined on the basis of § 285.33 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States pursuant to the provisions of section 6 (c) of the Act, the Assistant Administrator with the approval of the Secretary of the Commerce and with the concurrence of the Secretary of State, shall publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species found to be ineligible shall be denied entry unless it shall be established by satisfactory proof pursuant to § 285.35 that a particular shipment of such fish is not ineligible for entry: *Provided,* That entry shall not be denied and no such proof shall be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979]

§ 285.85 Proof of admissibility.

(a) For the purposes of § 285.33 of this part and section 6(c) of the Act a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under § 285.34 shall be deemed to be eligible for entry if the shipment is accompanied by a certificate of eligibility certifying as may be appropriate, that the fish in the shipment:

(1) Are not of the species specified in the published finding;

(2) Are of the species named in the published finding but were not taken in the regulatory area; or

(3) Are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

CERTIFICATE OF ELIGIBILITY

I, ————, an authorized officer of the Government of ————, certify that the shipment of tuna accompanied by this certificate, consisting of ———— (quantity) of ———— (Species) in —————————— (Number and kind of packages or containers bearing the following marks and numbers.)

☐ (a) Contains no tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975. (A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.)

☐ (b) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna were caught in the waters of———————————— (identify area or areas in which tuna were taken) by vessels subject to the jurisdiction of —————————————— and that none of the tuna were taken in the Atlantic Ocean or its adjacent seas. (A certificate of authentication executed by a consular offi-

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cer or consular agent of the United States must be attached.)

☐ (c) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. (Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent of the United States and the declaration(s) required by 19 CFR 10.79 and must be attached.)

————————————
Signature

————————————
Title

————————————
Address

(b) If the tuna are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

————————————————————

————————————————————

————————————————————

————————————————————

————————————————————

I, ———————————— (Name of the consular officer or consular agent) ———————— (Title) of the United States of America at ———————— (Place), duly commissioned and qualified, do hereby certify that ———————— (Name of foreign official), whose true signature and official seal are, respectively subscribed and affixed to the annexed certificate, was, on the —— day of ——, 19—, the date thereof, ———————— (Title of foreign official), duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the ———————— this day of ————19—.

————————————
Signature

————————————————————
(Name and full title of officer)

(c) If the tuna are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries", required by 19 CFR 10.79 must contain a further statement as follows: "We further declare that the said tuna were caught by us in full compliance with Part 285, Title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.86 Removal of import restrictions.

Upon a determination by the Assistant Administrator that the conditions no longer exist which warranted the imposition of import restrictions in the finding published pursuant to § 285.34 the Assistant Administrator, with the approval of the Secretary and the concurrence of the Secretary of State, shall publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein shall terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form that was subject to the finding published pursuant to § 285.34 shall continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish taken prior to or during the import restriction.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979]

Subpart E—International Port Inspection

SOURCE: 48 FR 53564, Nov. 28, 1983, unless otherwise noted.

§ 285.100 Basis and purpose.

At its sixth regular meeting, the International Commission for the Conservation of Atlantic Tunas (Commission) adopted an international port inspection scheme to assist in the enforcement of the Commission's recommendations. The following regulations have been adopted by the United States to implement the port inspection scheme.

§ 285.101 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by a contracting party (the United States and the countries listed in § 285.102(a)) as an authorized inspector for the Commission, who possesses an identification card so stating.

§ 285.102 Vessels subject to inspection.

(a) All United States tuna vessels or vessels carrying tuna and their catch, gear, and records are subject to inspection under this subpart by an authorized officer when landing or transshipping tuna or when making a port call at a port of the following countries, which are defined as the contracting parties. The names of any subsequent additional contracting parties may be added to the list by FEDERAL REGISTER notice. United States tuna vessels or vessels carrying tuna are also subject to the requirements of Subparts A through C as appropriate.

(1) Brazil
(2) Cuba
(3) France
(4) Gabon
(5) Ivory Coast
(6) Portugal
(7) Senegal
(8) South Africa
(9) Spain

(b) All tuna vessels or vessels carrying tuna, and registered by any of the above countries, and their catch, gear and records are subject to inspection under this subpart when landing or transshipping tuna or when making a port call in the United States.

(c) A vessel entering a port of the above countries because of *force majeure* shall be exempt from inspection by an authorized officer.

§ 285.103 Reports.

(a) Inspections shall be reported on a standardized Commission form and signed by the authorized officer. The master shall be entitled to add or have added to the report, any observation which the master thinks suitable. If the master adds information to the report, he also shall sign the report. The authorized officer shall note in the vessel's log that the inspection has been made. A copy of the report shall be given to the vessel master and a copy sent to the authorized officer's national authority.

(b) The master shall allow the authorized officer to examine any portion of the catch and gear and provide any relevant documents as the authorized officer deems necessary to verify compliance with these regulations.

SUBCHAPTER I—FISHERY MARKETING COOPERATIVES

PART 290—ISSUANCE OF CEASE AND DESIST ORDERS BY THE GOVERNMENT

Sec.

290.1 Scope of rules.
290.2 Institution of proceeding.
290.3 Complaint.
290.4 Notice of hearing.
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290.11 Preparation and issuance of final decision and order.

AUTHORITY: Sec. 2, 48 Stat. 1213; 15 U.S.C. 522, 1939 Reorganization Plan No. II, 53 Stat. 1433.

SOURCE: 31 FR 16099, Dec. 15, 1966, unless otherwise noted.

§ 290.1 Scope of rules.

The Act of June 25, 1934 (48 Stat. 1213; 15 U.S.C. 521-522), the functions under which were transferred to the Secretary of the Interior by 1939 Reorganization Plan No. II, hereinafter in these rules referred to as the Act, in section 2 thereof provides a remedy whereby the associations of producers of aquatic products authorized by section 1 of the Act may be ordered by the Secretary of the Interior to cease and desist from monopolizing or restraining trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof. These rules implement section 2 of the Act by establishing the procedure to be followed by the Secretary of the Interior or his authorized representative, hereinafter referred to in these rules as the Secretary, in the enforcement of the section. For rules governing practice generally before the Department of the Interior see Part 1 of Title 43, *Code of Federal Regulations.*

§ 290.2 Institution of proceeding.

(a) *Application to institute proceeding.* Any person having any information that an association of producers of aquatic products is monopolizing or restraining trade may file with the Secretary an application requesting the institution of such proceeding as is authorized under the Act. The application shall be in writing, signed by or on behalf of the applicant, and shall include a concise statement of the facts constituting the alleged activities and the name and address of the applicant together with the name and address of the association against which the applicant complains.

(b) *Status of the applicant.* The person filing an application as described in paragraph (a) of this section shall have no legal status in the proceeding which may be instituted as a result of the application, except where the applicant may be permitted to intervene therein, in the manner hereinafter provided, or may be called as a witness, and the applicant's identity shall not be divulged except with the applicant's prior consent or upon court order.

(c) *Who may institute.* If, after investigation of the matter complained of in the application described in paragraph (a) of this section, or upon application of another Federal agency, or after investigation made on his own motion, the Secretary has reason to believe that any association organized under the provisions of the Act is engaging in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he will institute a proceeding. Proceedings will be instituted only upon complaint issued by the Secretary.

§ 290.3 Complaint.

(a) *Service.* The complaint shall be served upon the association by being sent by certified mail with return receipt requested to its principal place of business or by being left with a responsible person at the association's principal place of business.

(b) *Contents.* The complaint shall state in concise terms the allegations of fact which constitute a basis for the proceeding and shall require the association to show cause why an order should not be issued requiring it to cease and desist from the activities alleged therein to be in restraint of trade.

§ 290.4 Notice of hearing.

There shall also be served upon the association a notice of hearing, which shall be attached to the complaint or contained therein, and which shall specify a day and place not less than thirty days after service thereof to appear, introduce evidence, and make arguments to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

§ 290.5 Service of documents.

Copies of all pleadings, briefs, memoranda, letters, and other documents filed by or on behalf of any party or which are otherwise submitted to an official conducting any part of the proceeding for consideration in connection therewith, shall be served upon all parties or their representatives in person or by certified mail.

§ 290.6 Hearing official.

The hearing for the purpose of taking evidence and hearing arguments to determine whether an order should be issued requiring the association to cease and desist from monopolization or restraint of trade shall be conducted by a hearing official designated by the Secretary. No person shall be assigned as hearing official who (a) has any pecuniary interest in the matter or business involved in the proceeding, or (b) has participated in the investigation preceding the institution of the proceeding, in the preparation of the complaint, or in the development of the evidence to be introduced in the proceeding.

§ 290.7 Intervention.

Upon written application, interested parties shall be permitted to intervene in the proceedings when the hearing official or the Secretary shall determine that the interests of justice will be served thereby.

§ 290.8 Hearing.

(a) *Departmental counsel.* The case against the association shall be presented by a Departmental counsel appointed for that purpose. The Bureau of Commercial Fisheries shall be responsible for the case against the association and the Bureau shall be considered a party within the purview of these rules.

(b) *Conduct of hearing.* Insofar as feasible, hearings shall be informal. Parties may offer oral and written evidence, subject to the exclusion by the hearing official, in his discretion, of irrelevant, immaterial, repetitious, or hearsay evidence.

(c) *Briefs.* Briefs may be submitted on behalf of interested parties at any time prior to the 30 days after the termination of the hearing.

(d) *Examination of witnesses.* Attention of witnesses shall be invited to 18 U.S.C. 1001. Testimony may be received under oath or affirmation. All witnesses may be examined or cross-examined by the hearing official and by representatives of any party.

(e) *Transcript.* The hearing official shall make provision for a complete transcript of the hearing. A copy of the transcript shall be available to interested parties upon payment of a fee prescribed by the Chief Clerk of the Department of the Interior pursuant to Part 2 of Title 43, Code of Federal Regulations, or pursuant to any applicable Departmental contract covering reporting services.

§ 290.9 Preliminary decision by hearing official.

(a) *Issuance of preliminary decision.* Following the hearing and upon completion of the time allowed for filing briefs, the hearing official shall issue a decision embodying his findings of fact and conclusions of law on all issues as to whether the association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby. The decision of the hearing official shall be made a part of the record and a copy thereof shall be served upon all parties to the proceeding.

(b) *Filing of exceptions.* Within 30 days after service of the decision of the hearing official any party to the proceeding may file with the hearing official exceptions to his decision. This document of exceptions shall set forth separately and specifically each error asserted.

(c) *Transmittal of record.* The hearing official, immediately following the period allowed for the filing of exceptions, shall transmit to the Secretary the entire record of the proceeding.

§ 290.10 Argument before the Secretary.

(a) *Oral argument.* Unless a party has included in the exceptions a request for oral argument before the Secretary or has filed a separate request for oral argument prior to the expiration of the last date for filing such exceptions, the right to such oral argument shall be deemed to have been waived.

(b) *Briefs.* The parties may file written briefs either in addition to oral argument or in lieu thereof.

(c) *Scope of argument.* Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions. If the Secretary determines that additional issues should be argued, the parties or their representatives shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues argued.

§ 290.11 Preparation and issuance of final decision and order.

As soon as practicable after the receipt of the record from the hearing official, or in case further proceedings were had before the Secretary, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record as a whole, including that of any proceedings before him, shall prepare a final decision and an order based upon the decision. If the Secretary has found that the association is engaged in monopolization or restraint of trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, the order shall recite the facts found by him and direct such association to cease and desist from monopolization or restraint of trade. The Secretary shall cause this order to be served upon the association. On the request of the association, or if it fails and neglects for 30 days to obey such order, the Secretary shall, in accordance with the Act, file in the district court in the judicial district in which the association has its principal place of business a certified copy of the order and of all the records in the proceeding together with a petition asking that the order be enforced and shall given notice to the Attorney General and to the association of such filing.

SUBCHAPTER J—CONTINENTAL SHELF

PART 296—FISHERMEN'S CONTINGENCY FUND

Sec.
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AUTHORITY: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (Title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

"*Area affected by Outer Continental Shelf activities*" means the area within a 3-mile radius of any casualty site which:

(a) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or

(b) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

"*Chief, FSD*" means the Chief of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

"*Citizen of the United States*" means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

"*Commercial fisherman*" means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

"*Commercial fishing vessel*" means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

"*Easement*" means a right of use or easement granted under 30 CFR section 250.18.

"*Fish*" means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"*Fishing gear*" means any commercial fishing vessel, and any equipment of such vessel.

"*Fund*" means the Fishermen's Contingency Fund established by Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

"*Holder*" means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

"*Lease*" means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

"*Negligence or fault*" includes, but is not limited to, failure to:

(a) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(b) Avoid obstructions recorded on nautical charts or in the Notice to

Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(c) Abide by established rules of the road;

(d) Use proper care; or

(e) Use due care and diligence to mitigate the damage or loss.

"*Outer Continental Shelf*" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

"*Person*" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"*Resulting Economic Loss*" means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

"*Right-of-way*" means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0-5.

"*Secretary*" means the Secretary of Commerce or his designee.

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of $5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Effective date.* These regulations will apply to claims filed on or after June 30, 1982, and to those claims refiled under paragraph (d) of this section.

(d) *Refiled claims.* Any claim filed before June 30, 1982, will be subject to these regulations if:

(1) No final decision had been made on the claim by June 30, 1982; and

(2) The claimant has notified the Secretary in writing by August 11, 1982, of his intent to refile the claim.

(e) *Exceptions.* Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation*—(1) *General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to one of the following NMFS Offices:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930, (617) 281-3224

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, (813) 893-3272

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2478

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Bin C15700, Seattle, WA 98115, (206) 527-6127

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586-7224

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, DC 20235, (202) 634-4688

(3) *Written confirmation of oral fifteen-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each

fifteen-day report that is made by telephone, radiotelephone, or other oral communication. Address the written confirmation to:

Chief, Financial Services Division, National
Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, DC 20235

(4) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file and when and where to file claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence).

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units hauled on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

(Approved by the Office of Management and Budget under control number 0648-0082)

[47 FR 49600, Nov. 1, 1982, as amended at 48 FR 57302, Dec. 29, 1983; 50 FR 13796, Apr. 8, 1985]

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim, the Interior Department will immediately:

(1) Convert the casualty coordinates into latitude and longitude, plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities; (2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years' imprisonment, or both.

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be re-

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sponsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FDS, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, FSD, shall immediately disburse the claim awarded if the claimant:

(1) States in writing that he will not request review of the initial determination; and

(2) Signs an agreement to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) If the claimant does not submit the statement and agreement specified above, the Chief, FSD, will not disburse the award until 30 days after issuance of the initial determination.

§ 296.14 Subrogation.

(a) Upon payment of a claim, the Chief, FSD, Will obtain a subrogation agreement signed by the claimant which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.

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CHAPTER III—INTERNATIONAL REGULATORY AGENCIES (FISHING AND WHALING)

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SUBCHAPTER A—INTERNATIONAL PACIFIC HALIBUT COMMISSION

PART 301—PACIFIC HALIBUT FISHERIES

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AUTHORITY: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773k.

SOURCE: 50 FR 13382, Apr. 4, 1985, unless otherwise noted.

§ 301.1 Short title.

This part may be cited as the *Pacific Halibut Fishery Regulations.*

§ 301.2 Interpretation.

(a) In this part,

Charter vessel means a vessel used for hire in sport fishing for halibut.

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered.

Commission means the International Pacific Halibut Commission.

Fishing means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component of setline gear anywhere in the maritime area.

Land with respect to halibut means to bring to shore and to offload.

License means a halibut fishing license issued by the Commission pursuant to §§ 301.10 and 301.17.

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.4.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing.

(b) In this part, all bearings are magnetic, unless otherwise stated, and all positions are determined by the most recent charts issues by the United States National Ocean Survey or the Canadian Hydrographic Service.

§ 301.3 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, inlcuding the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.4 to 301.16 apply only to commercial fishing for halibut.

(c) Section 301.17 applies only to sport fishing for halibut.

(d) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.4 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts of the states of California, Oregon, and Washington. Subarea 2A-1 includes all waters off the coast of Washington that are north of latitude 48°02′15″ N., east of longitude 125°44′00″ W., and west of longitude 123°42′30″ W.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312') from Cape Spencer Light (latitude 58°11′57″ N., longitude 136°38′18″ W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41′15″ N. longitude 155°35′00″ W.) to Cape Ikolik (latitude 57°17′17″ N., longitude 154°47′18″ W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44′50″ N., longitude 154°08′44″ W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29′00″ N., longitude 164°20′00″ W.).

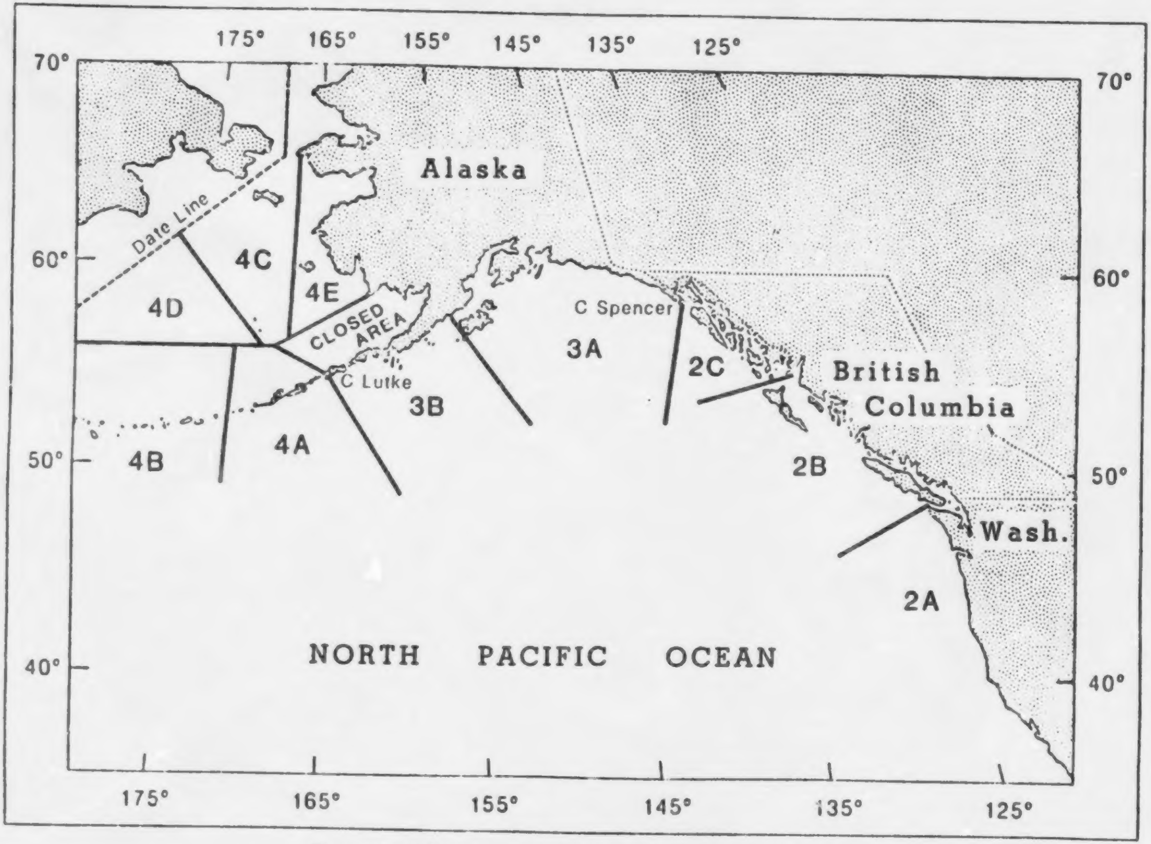
(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.7 that are east of longitude 172°00′00″ W. and south of latitude 56°20′00″ N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20′00″ N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.7 which are east of a line extending true northwest (315°) from a point at latitude 56°20′00″ N., longitude 170°00′00″ W. and west of longitude 168°00′00″ W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, and west of Area 4C.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.7, east of longitude 168°00′00″ W., and south of latitudes 65°34′00″ N.


175°
165°
155°
145°
135°
125°
70°
60°
50°
40°
Alaska
Date Line
4C
4D
4E
CLOSED AREA
C Lutke
C Spencer
3A
3B
4A
4B
2C
2B
2A
British Columbia
Wash.
NORTH PACIFIC OCEAN

REGULATORY AREAS FOR THE PACIFIC HALIBUT FISHERY

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§ 301.5 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and in subsection (b) and apply where the catch limits specified in § 301.8 have not been taken, except that the June 24-26 fishing period in Areas 2C, 3A, 3B, 4A, 4B, and 4D may be modified by the Commission to insure fishing in later months.

2A

05/09-05/21
06/08-06/20
07/24-08/05
08/23-09/04
09/19-10/01

2B

4/20-04/29
06/07-06/16
08/09-08/18
09/20-09/29
10/11-10/20

2C

04/27-04/29
05/27-05/29
06/24-06/26
09/09-09/11
09/20-*

3A-3B

04/27-04/29
05/27-05/29
06/24-06/26
09/09-09/11
09/20-*

4A-4B

04/27-04/29
05/27-05/29
06/24-06/26
07/09-07/13
08/07-08/14
09/20-*

4D

04/27-04/29
05/27-05/29
06/24-06/26
07/09-07/19
08/07-08/14
09/20-*

4C

06/01-06/02
06/03-06/04
06/05-06/06
06/07-06/08
06/09-06/10
06/11-06/12
06/13-06/14
06/15-06/16
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08/02-08/03
08/04-08/05
08/07-*

4E

05/21-05/23
05/24-05/26
05/27-05/29
05/30-06/01
06/02-06/04
06/05-06/07
06/08-06/10
06/11-06/13
06/14-06/16
06/17-06/19
06/20-06/22
06/23-06/25
06/26-06/28
06/29-07/01
07/02-07/04
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07/08-07/10
07/11-07/13
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09/21-09/23
09/24-09/26
09/27-09/29
09/30-10/02
10/03-10/05
10/06-10/08
10/09-10/11
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10/15-10/17
10/18-10/20
10/21-10/23
10/24-10/26
10/27-10/29

*Date to be announced by the Commission.

(b) In Subarea 2A-1:

(1) The fishing season shall commence on April 20 and terminate when the catch limit specified in § 301.8 for Area 2A is reached, or on October 1, whichever is earlier;

(2) Fishing in Subarea 2A-1 at times when fishing in Area 2A is closed is authorized only for persons holding valid identification cards issued pursuant to 25 CFR 249.3 and whose historic halibut fishing is documented and has been acknowledged by an executive agency of the United States.

(c) Notwithstanding paragraph (a) of this section, where Area 3A is closed under § 301.8 on a date before the attainment of the catch limit in Area 3B, Area 3B will close on the same date.

(d) Where Area 3B is closed under paragraph (c) of this section, it shall reopen on the next scheduled opening date on the schedule of fishing periods referred to in paragraph (a) of this section and continue on that schedule until the catch limit specified in § 301.8 is attained.

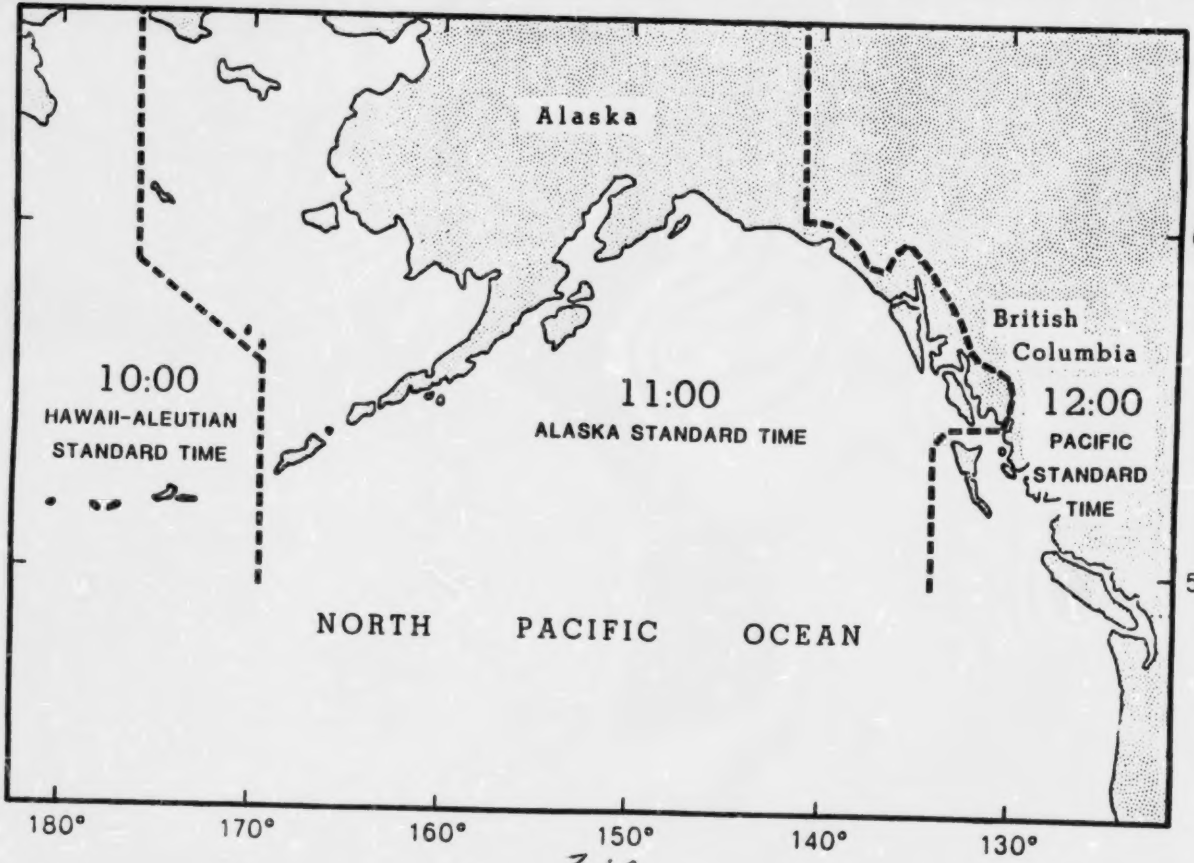
(e) Each fishing period shall begin and terminate at 1200 hours Pacific Standard Time on the date set out in the table to this section, unless the Commission specifies otherwise.

(f) All commercial fishing for halibut shall cease at 1200 hours Pacific Standard Time on October 31.

SCHEDULE

[Legal Opening and Closing Hours for Halibut Fishing for Standard Time (ST) and Daylight Savings Time (DT) in Different Time Zones of the Northeastern Pacific Ocean]

Time zone	Pacific		Alaska		Aleutian	
	PST	PDT	AkST	AkDT	AlST	AlDT
Hours	1200	1300	1100	1200	1000	1100


Alaska
British Columbia
10:00
HAWAII-ALEUTIAN STANDARD TIME
11:00
ALASKA STANDARD TIME
12:00
PACIFIC STANDARD TIME
NORTH PACIFIC OCEAN
60°
50°
180°
170°
160°
150°
140°
130°

319

§ 301.6 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.5 in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.14 (h) and (i), this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No person shall retrieve any halibut fishing gear from a closed area until the vessel first offloads any halibut on board and then obtains a hold inspection from a fishery officer or a representative of the Commission, except as provided in paragraph (f) of this section.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear in a closed area after notifying a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraphs (e) and (f) of this section the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (e) or (f) of this section.

§ 301.7 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36′00″ N., longitude 164°55′42″ W.) to a point at latitude 56°20′00″ N., longitude 168°30′00″ W. and south of a line from the latter point to Cape Newenham (latitude 58°39′00″ N., longitude 162°10′25″ W.) are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.8 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.5 shall be limited to the weight expressed in pounds or metric tons shown the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	500,000	227
2B	10,000,000	4,536
2C	9,000,000	4,082
3A	23,000,000	10,433
3B	9,000,000	4,082
4A	1,700,000	771
4B	1,300,000	590
4C	600,000	272
4D	600,000	272
4E	50,000	23

(b) Catches taken in Subarea 2A-1 shall be a part of the total allowable catch specified in paragraph (a) of this section for Regulatory Area 2A.

(c) The weights in each catch limits shall be computed on the basis that the heads of the fish are off and their entrails, removed.

(d) The Commission shall determine and announce to the public the data on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(e) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(f) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 32,000,000 pounds (14,515 metric tons) for the combined areas is taken.

(g) When under paragraphs (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in the area after the date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

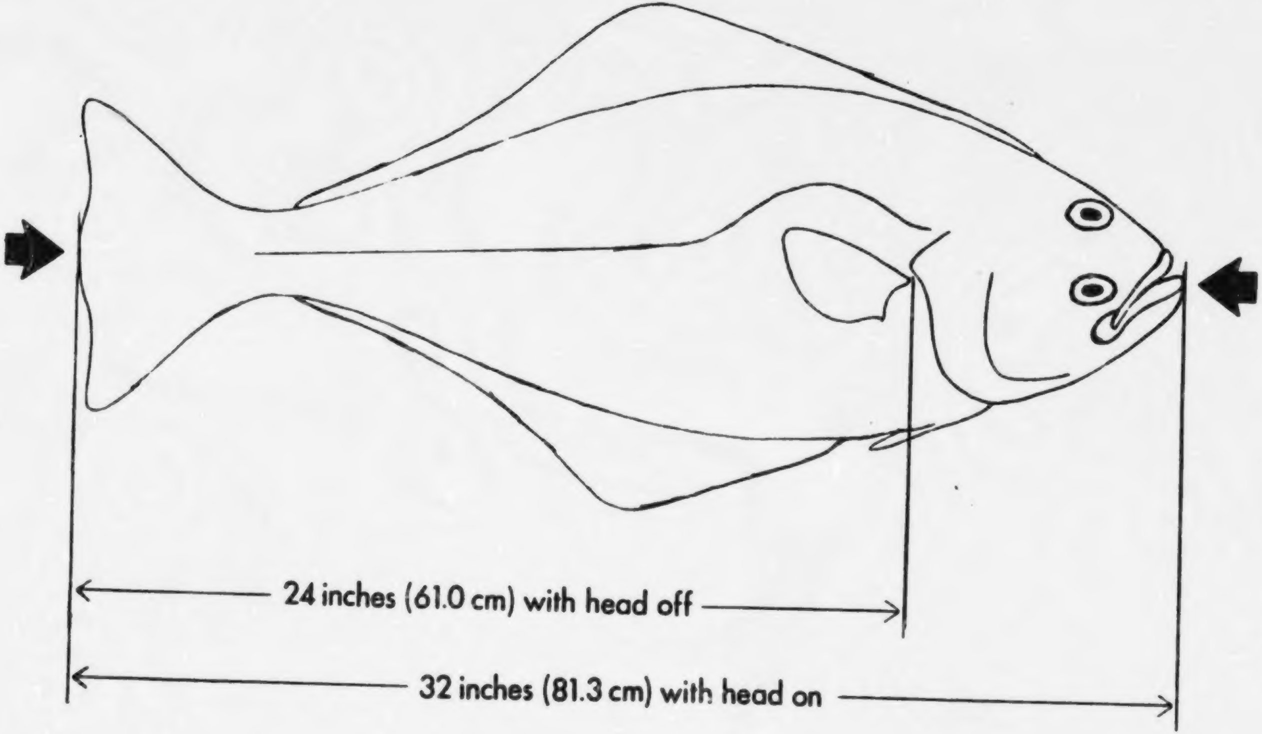
§ 301.9 Size limits.

(a) No person shall take or possess any halibut that:

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the schedule, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the schedule.

(b) No person shall mutilate or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.


24 inches (61.0 cm) with head off
32 inches (81.3 cm) with head on

MINIMUM COMMERCIAL SIZE

§ 301.10 Licensing of vessels.

(a) The Commission may issue a license in respect of a vessel used for halibut fishing.

(b) No person shall fish for halibut from a vessel, nor possess halibut caught from a vessel, unless the Commission has issued a license in respect of that vessel.

(c) A license issued in respect of a vessel referred to in paragraph (b) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(d) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from customs or fishery officers of either Contracting Party, or from the Commission.

(f) Licenses issued under this section shall be valid only during the year in which they are issued.

(g) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(h) No person shall:

(1) Fish for halibut while on board a vessel in respect of which the Commission has issued a license while that vessel is in an area where commercial fishing for halibut is not permitted under this part; or

(2) Possess halibut while on board a vessel referred to in paragraph (h)(1) of this section in an area referred to in that paragraph unless that vessel is in transit to or within a port in which that halibut may be lawfully sold.

(i) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

§ 301.11 Vessel clearance and hold inspection.

(a) No person other than a person who lands all of his halibut catch at a port within Area 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.7 shall fish for halibut in Area 4A, 4B, or 4D from a vessel for which a license is required under this part, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Area 4A, 4B, or 4D.

(b) No person other than a person who lands all of his halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel claearance and hold inspection both before and after such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands all of his halibut catch at a port within Area 4E, or the closed area defined in § 301.7 may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspection required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(e) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(f) No halibut shall be on board at the time of inspection required by paragraph (e) of this section.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section is not valid if the vessel has fished for halibut in Area 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

§ 301.12 Logs.

(a) The operator of any vessel five (5) net tons or greater holding a license shall keep an accurate log of all fishing operations undertaken under the license including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.13 Receipt and possession of halibut.

(a) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall keep an accurate record of each such purchase or receipt, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(b) The record referred to in paragraph (a) of this section shall be:

(1) Retained by the person keeping it for a period of two years from the date the record is made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(c) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(d) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (a) of this section shall be maintained by the operator of the vessel from which halibut was caught, in compliance with paragraph (b) of this section.

§ 301.14 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear except as provided in § 301.15.

(c) No person shall possess halibut while on board a vessel containing any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) At times when Area 2A is closed no person authorized to fish in Subarea 2A-1 shall fish for halibut in that subarea using gear other than a handline or nonpowered rod and reel with no more than two hooks attached.

(e) At times when Area 2A is closed no person authorized to fish in Subarea 2A-1 shall possess halibut taken in that subarea with gear other than a handline or nonpowered rod and reel with no more than two hooks attached.

(f) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing in a regulatory area shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number,

which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(g) All longline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing in a regulatory area shall be marked as required by the *British Columbia Fishery (General) Regulations.*

(h) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

§ 301.15 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.16 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

§ 301.17 Sport fishing for halibut.

(a) Sport fishing for halibut is only permitted from March 1 to December 31, 1985, and from February 1 to October 31, 1986.

(b) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(c) No person shall catch, possess, or land more than two halibut of any size per day from a vessel that is engaged in sport fishing.

(d) After two halibut have been taken by any person engaged in sport fishing, those halibut shall be landed before that person takes more halibut on any succeeding day.

(e) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(f) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel.

(g) A license issued in respect of a vessel referred to in paragraph (f) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by custom and fishery officers of the Contracting Parties.

(h) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(i) Licenses issued under this section shall be valid only during the year in which they are issued.

§ 301.18 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

SUBCHAPTER B—INTERNATIONAL WHALING COMMISSION

PART 351—WHALING

Subpart A—Interpretation

Sec.
351.1 Definitions.

Subpart B—Seasons

351.21 Use of factory ships and whale catchers.
351.22 Use of land stations and whale catchers.
351.23 Other operations.

Subpart C—Capture

351.30 Humane killing.
351.31 Indian Ocean sanctuary.
351.32 Area limits for factory ships.
351.33 Classification of areas and divisions.
351.34 Classification of stocks.
351.35 Catch limits for baleen whales.
351.36 Aboriginal substance whaling.
351.37 Taking of calves or suckling whales prohibited.
351.38 Size limits for sei, Bryde's and fin whales.
351.39 Catch limits for sperm whales.
351.40 Size limits for sperm whales.
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TABLE 2
TABLE 3

Subpart D—Treatment

351.51 Processing of whales.
351.52 Regulation of processing.

Subpart E—Supervision and Control

351.61 Inspection.
351.62 Remuneration of employees.
351.63 Measurement of whales.

Subpart F—Information Required

351.71 Reports and records.
351.72 Submission of catch data and notification of closure.
351.73 Submission of statistical data.
351.74 Collection of specimens.
351.75 Review of scientific permits.
351.76 Submission of laws and regulations.
APPENDIX A

AUTHORITY: Article 5, 62 Stat. 1718, sec. 2-14, 64 Stat. 421-425; 16 U.S.C. 916 et seq.

SOURCE: 45 FR 85031, Dec. 24, 1980, unless otherwise noted.

Subpart A—Interpretation

§ 351.1 Definitions.

The following expressions have the meanings respectively assigned to them, that is to say:

Baleen whales

(a) "Baleen whale" means any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale.

(b) "Blue whale" (*Balaenoptera musculus*) means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

(c) "Bowhead whale" (*Balaena mysticetus*) means any whale known as bowhead, Arctic right whale, great polar whale, Greenland right whale, Greenland whale.

(d) "Bryde's whale" (*Balaenoptera edeni, B. brydei*) means any whale known as Bryde's whale.

(e) "Fin whale" (*Balaenoptera physalus*) means any whale known as common finback, common rorqual, fin whale, herring whale, or true fin whale.

(f) "Gray whale" (*Eschrichtius robustus*) means any whale known as gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(g) "Humpback whale" (*Megaptera novaeangliae*) means any whale known as bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchback whale.

(h) "Minke whale" (*Balaenoptera acutorostrata, B. bonaerensis*) means any whale known as lesser rorqual, little piked whale, minke whale, pikeheaded whale or sharp headed finner.

(i) "Pygmy right whale" (*Caperea marginata*) means any whale known as southern pygmy right whale, pygmy right whale.

(j) "Right whale" (*Eubalaena glacialis, E. australis*) means any whale known as Atlantic right whale, Arctic right whale, Biscayan right whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, or southern right whale.

(k) "Sei whale" (*Balaenoptera borealis*) means any whale known as sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale.

Toothed whales

(a) "Toothed whale" means any whale which has teeth in the jaws.

(b) "Beaked whale" means any whale belonging to the genus *Mesoplodon*, or any whale known as Cuvier's beaked whale (*Ziphius cavirostris*), or Shepherd's beaked whale (*Tasmacetus shepherdi*).

(c) "Bottlenose whale" means any whale known as Baird's beaked whale (*Berardius bairdii*), Arnoux's whale (*Berardius arnuxii*), southern bottlenose whale (*Hyperoodon planifrons*), or northern bottlenose whale (*Hyperoodon ampullatus*).

(d) "Killer whale" (*Orcinus orca*) means any whale known as killer whale or orca.

(e) "Pilot whale" means any whale known as long-finned pilot whale (*Globicephala melaena*) or short-finned pilot whale. (*G. macrorhynchus.*)

(f) "Sperm whale" (*Physeter macrocephalus*) means any whale known as sperm whale, spermacet whale, cachalot or pot whale.

General

(a) "Strike" means to penetrate with a weapon used for whaling.

(b) "Take" means to flag, buoy or make fast to a whale catcher.

(c) "Land" means to retrieve to a factory ship, land station, or other place where a whale can be treated.

(d) "Lose" means to either strike or take but not land.

(e) "Dauhval" means any unclaimed dead whale found floating.

(f) "Lactating whale" means (1) with respect to baleen whales—a female which has any milk present in a mammary gland, (2) with respect to sperm whales—a female which has milk present in a mammary gland the maximum thickness (depth) of which is 10 cm or more. This measurement shall be at the mid ventral point of the mammary gland perpendicular to the body axis, and shall be logged to the nearest centimetre; that is to say, any gland between 9.5 cm and 10.5 cm shall be logged as 10 cm. The measurement of any gland which falls on an exact 0.5 centimetre shall be logged at the next 0.5 centimetre, eg 10.5 cm shall be logged as 11.0 cm.

However, notwithstanding these criteria, a whale shall not be considered a lactating whale if scientific (histological or other biological) evidence is presented to the appropriate national authority establishing that the whale could not at that point in its physical cycle have had a calf dependent on it for milk.

(g) "Small-type whaling" means catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.

Subpart B—Seasons

§ 351.21 Use of factory ships and whale catchers.

(a) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales except minke whales, in any waters south of 40° South Latitude, except during the period from 12th December to 7th April following, both days inclusive.

(b) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating sperm or minke whales, except as permitted by the Contracting Governments in accordance with paragraphs (c) and (d) of this section, and § 351.23.

(c) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction, an open season or seasons not to exceed eight months out of any period of twelve months during which the taking or killing of sperm whales by whale catchers may be permitted; provided that a separate open season may be declared for each factory ship and the whale catchers attached thereto.

(d) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by the whale catchers may be permitted provided that:

(1) A separate open season may be declared for each factory ship and the whale catchers attached thereto;

(2) The open season need not necessarily include the whole or any part of the period declared for other baleen whales pursuant to paragraph (a) of this section.

(c) It is forbidden to use a factory ship which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, except minke whales, in any other area except the North Pacific Ocean and its dependent waters north of the Equator for the same purpose within a period of one year from the termination of that season; provided that catch limits in the North Pacific Ocean and dependent waters are established as provided in § 351.35(b) and § 351.39(b) of this part and provided that this section shall not apply to a ship which has been used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

§ 351.22 Use of land stations and whale catchers.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of killing or attempting to kill baleen and sperm whales except as permitted by the Contracting Government in accordance with paragraphs (b), (c) and (d) of this section.

(b) Each Contracting Government shall declare for all land stations under its jurisdiction, and whale catchers attached to such land stations, one open season during which the taking or killing of baleen whales, except minke whales, by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of the Contracting Government; provided that a separate open season may be declared for any land station used for the taking or treating of baleen whales, except minke whales, which is more than 1,000 miles from the nearest land station used for the taking or treating of baleen whales, except minke whales, under the jurisdiction of the same Contracting Government.

(c) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations, one open season not to exceed eight continuous months in any one period of twelve months, during which the taking or killing of sperm whales by the whale catchers shall be permitted, provided that a separate open season may be declared for any land station used for the taking or treating of sperm whales which is more than 1,000 miles from the nearest land station used for the taking or treating of sperm whales under the jurisdiction of the same Contracting Government.

(d) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations one open season not to exceed six continuous months in any period of twelve months during which the taking or killing of minke whales by the whale catchers shall be permitted (such period not being necessarily concurrent with the period declared for other baleen whales, as provided for in paragraph (b) of this section); provided that a separate open season may be declared for any land station used for the taking or treating of minke whales which is more than 1,000 miles from the nearest land station used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government. Except that a separate open season may be declared for any land station used for the taking or treating of minke whales which is located in an area having oceanographic conditions clearly distinguishable from those of the area in which are located the other land stations used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government; but the declaration of a separate open season by virtue of the provisions of this paragraph shall not cause thereby the period of time covering the open seasons declared by the same Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this section shall apply to all land stations as defined in Article II of the Whaling Convention of 1946.

§ 351.23 Other operations.

Each Contracting Government shall declare for all whale catchers under its jurisdiction not operating in conjunction with a factory ship or land station one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by such whale catchers may be permitted. Notwithstanding this section one continuous open season not to exceed nine months may be implemented so far as Greenland is concerned.

Subpart C—Capture

§ 351.30 Humane killing.

The killing for commercial purposes of whales, except minke whales, using the cold grenade harpoon shall be forbidden from the beginning of the 1980/81 pelagic and 1981 coastal seasons. The killing for commercial purposes of minke whales using the cold grenade harpoon shall be forbidden from the beginning of the 1982/83 pelagic and the 1983 coastal seasons.

[48 FR 15130, Apr. 7, 1983]

§ 351.31 Indian Ocean sanctuary.

In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the Indian Ocean Sanctuary. This comprises the waters of the Northern Hemisphere from the coast of Africa to 100 degrees East, including the Red and Arabian Seas and the Gulf of Oman; and the waters of the Southern Hemisphere in the sector from 20 degrees East to 130 degrees East, with the Southern boundary set at 55 degrees South. This prohibition applies irrespective of the classifications of baleen or toothed whale stocks in the Sanctuary, as may from time to time be determined by the Commission. This prohibition will apply for ten years from 24 October 1979 with the provision for a general review after five years, unless the Commission decides otherwise.

§ 351.32 Area limits for factory ships.

It is forbidden to use a factory ship or whale catcher attached thereto, for the purpose of taking or treating baleen whales, except minke whales, in any of the following areas:

(a) In the waters north of 66° North Latitude, except that from 150° East Longitude eastwards as far as 140° West Longitude, the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) In the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) In the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) In the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) In the Indian Ocean and its dependent waters north of 40° South Latitude.

§ 351.33 Classification of areas and divisions.

(a) *Classification of areas.* Areas relating to Southern Hemisphere baleen whales except Bryde's whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 1.

(b) *Classification of divisions.* Divisions relating to Southern Hemisphere sperm whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 3.

(c) *Geographical boundaries in the North Atlantic.* The geographical boundaries for the fin, minke and sei whale stocks in the North Atlantic are:

Fin whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Newfoundland—Labrador, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 46° N 42° W and

North of a line through: 46° N 42° W, 46° N 54°30′ w, 47° N 54° W.

West Greenland, East of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, and West of a line through: 52°20′ N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

East Greenland—Iceland, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

North Norway, North and East of a line through: 74° N 22° W, 74° N 3° E, 68° N 3° E, 67° N 0°, 37° N 14° E.

West Norway and Faroe Islands, South of a line through: 67° N 14° E, 67° N 0°, 60° N 18° W, and North of a line through: 61° N 16° W, 61° N 0°, Thyboron (western entrance to Limfjorden, Denmark).

British Isles—Spain and Portugal, South of a line through: Thyboron (Denmark), 61° N 0°, 61° N 16° W, and East of a line through: 63° N 11° W, 60° N 18° W, 22° N 18° W.

Minke whale stocks

Canadian East Coast, West of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, 20° N 42° W.

West Greenland, East of a line through: 75° N 73°30′ W, 69° N 59° W, 61° N 59° W, 52°20′ N 42° W, and West of a line through: 52°20′ N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

Central, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Northeastern, East of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and North of a line through: 74° N 3° E, 74° N 22° W.

Sei whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30′ W, 46° N 42° W, 20° N 42° W.

Iceland—Denmark Strait, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Eastern, East of a line through: 20°N 18°W, 60°N 18°W, 68°N 3°,E 74°N 30°E and North of a line through: 74°N 3°E, 74°N 22°W.

(d) *Geographical boundaries in the North Pacific.* The geographical, boundaries for sperm, Bryde's and minke whale stocks in the North Pacific are:

Sperm Whale Stocks

Western Division

West of a line from the ice-edge south along the 180° meridian of longitude to 180°, 50° N., then east along the 50° N. parallel of latitude to 160° W., 50° N., then south along the 160° W. meridian of longitude to 160° W., 40° N., then east along the 40° N. parallel of latitude to 150° W., 40° N., then south along the 150° W. meridian of longitude to the equator.

Eastern Division

East of the line described above.

Bryde's Whale Stocks

East China Sea, West of the Ryuku Island chain.

Western, West of 160° W., excluding the East China Sea stock area.

Eastern, East of 160° W., excluding the Peruvian stock area.

Minke Whale Stocks

Sea of Japan—Yellow Sea—East China Sea

West of a line through the Philippine Islands, Taiwan, Ryuku Islands, Kyushu, Honshu, Hokkaido, and Sakhalin Island, north of the equator.

Okhotsk Sea—West Pacific

East of the Sea of Japan—Yellow Sea—East China Sea stock area and west of 180°, north of the equator.

Remainder

East of the Okhotsk Sea—West Pacific stock area, north of the equator.

(e) Geographical boundaries for Bryde's whale stocks in the Southern Hemisphere.

Southern Indian Ocean, 20°E to 130°E, south of the Equator.

Solomon Islands, 150°E to 170°E, 20°S to the Equator.

Western South Pacific, 130°E to 150°W, south of the Equator (excluding the Solomon Islands stock area).

Peruvian, 100°W to the South American coast, 10°S to 10°N.

Eastern South Pacific, 150°W to 70°W, south of the Equator (excluding the Peruvian stock area).

South Atlantic, 70°W to 20°E, south of the Equator (excluding the South African Inshore stock area).

South African Inshore, 30nm seawards off the southwest coast of South Africa from 25°S latitude down and around the coast to 25°E longitude.

[45 FR 85031, Dec. 24, 1980, as amended at 47 FR 3793, Jan. 27, 1982; 48 FR 15130, Apr. 7, 1983]

§ 351.34 Classification of stocks.

All stocks of whales shall be classified in one of three categories according to the advice of the Scientific Committee as follows:

(a) A Sustained Management Stock (SMS) is a stock which is not more than 10 per cent of Maximum Sustainable Yield (hereinafter referred to as MSY) stock level below MSY stock level, and not more than 20 per cent above that level; MSY being determined on the basis of the number of whales.

(1) When a stock has remained at a stable level for a considerable period under a regime of approximately constant catches, it shall be classified as a Sustained Management Stock in the absence of any positive evidence that it should be otherwise classified.

(2) Commercial whaling shall be permitted on Sustained Management Stocks according to the advice of the Scientific Committee. These stocks are listed in Tables 1, 2, and 3 of this part.

(3) For stocks at or above the MSY stock level, the permitted catch shall not exceed 90 per cent of the MSY. For stocks between the MSY stock level and 10 per cent below that level, the permitted catch shall not exceed the number of whales obtained by taking 90 per cent of the MSY and reducing that number by 10 per cent for every 1 per cent by which the stock falls short of the MSY stock level.

(b) An Initial Management Stock (IMS) is a stock more than 20 per cent of MSY stock level above MSY stock level. Commercial whaling shall be permitted on Initial Management Stocks according to the advice of the Scientific Committee as to measures necessary to bring the stocks to the MSY stock level and then optimum level in an efficient manner and without risk of reducing them below this level. The permitted catch for such stocks will not be more than 90 per cent of MSY as far as this is known, or, where it will be more appropriate, catching effort shall be limited to that which will take 90 per cent of MSY in a stock at MSY stock level.

(1) In the absence of any positive evidence that a continuing higher percentage will not reduce the stock below the MSY stock level no more than 5 per cent of the estimated initial exploitable stock shall be taken in any one year. Exploitation should not commence until an estimate of stock size has been obtained which is satisfactory in the view of the Scientific Committee. Stocks classified as Initial Management Stock are listed in Tables 1, 2, and 3 of this part.

(c) A Protection Stock (PS) is a stock which is below 10 per cent of MSY stock level below MSY stock level.

(1) There shall be no commercial whaling on Protection Stocks. Stocks so classified are listed in Tables 1, 2, and 3 of this part.

(d) Notwithstanding the other provisions of § 351.34, there shall be a moratorium on the taking, killing, or treating of whales, excluding minke whales, by factory ships or whale catchers attached to factory ships. This moratorium applies to sperm whales, killer whales and baleen whales, excluding minke whales.

(e) Notwithstanding the other provisions of § 351.34, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whole stocks and consider modification of this provision and the establishment of other catch limits.

[45 FR 85031, Dec. 24, 1980, as amended at 48 FR 15130, Apr. 7, 1983]

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1983/84 pelagic season and the 1984 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the sum of the area catches exceed the total catch limit for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1984 and in the

North Atlantic Ocean in 1984 shall not exceed the limits shown in Tables 1 and 2.

[49 FR 1522, Jan. 12, 1984]

§ 351.36 Aboriginal substance whaling.

(a) Notwithstanding the provisions of § 351.34, catch limits for aboriginal subsistence whaling to satisfy aboriginal subsistence need for the 1984 whaling season and each whaling season thereafter shall be established in accordance with the following principles:

(1) For stocks at or above the MSY level, aboriginal subsistence catches shall be permitted so long as total removals do not exceed 90 percent of MSY.

(2) For stocks below the MSY level, but above a certain minimum level, aboriginal subsistence catches shall be permitted so long as they are set at levels which will allow whale stocks to move to the MSY level.[1]

(3) The above provisions will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of these provisions on whale stocks and consider modification.

(b) Catch limits for aboriginal subsistence whaling are as follows:

(1) The taking of 9 humpback whales not below 35 feet (10.7 metres) in length per year is permitted in Greenland waters provided that whale catchers of less than 50 gross register tonnage are used for this purpose.

(2) The taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that:

(i) For the years 1984 and 1985 the total number of whales struck shall not exceed 43,[2] provided that in either year the number of whales struck shall not exceed 27.

(ii) It is forbidden to strike, take, or kill calves or any bowhead whale accompanied by a calf.

(3) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. The number of gray whales taken in accordance with this subparagraph in 1984 shall not exceed the limit shown in Table 1.

[48 FR 15130, Apr. 7, 1983, as amended at 49 FR 1523, Jan. 12, 1984]

§ 351.37 Taking of calves or suckling whales prohibited.

It is forbidden to take or kill suckling calves or female whales accompanied by calves.

§ 351.38 Size limits for sei, Bryde's and fin whales.

(a) It is forbidden to take or kill any sei or Bryde's whales below 40 feet (12.2 metres) in length except that sei and Bryde's whales of not less than 35 feet (10.7 metres) may be taken for delivery to land stations, provided that, the meat of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) in the Northern Hemisphere; except that fin whales of not less than 55 feet (16.8 metres) may be taken in the Southern Hemisphere for delivery to land stations and fin whales of not less than 50 feet (15.2 metres) may be taken in the Northern Hemisphere for delivery to land stations, provided that, in each case the meat of such whales is to be used for local consumption as human or animal food.

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[1] The Commission, on the advice of the Scientific Committee, shall establish as far as possible (i) a minimum stock level for each stock below which whales shall not be taken, and (ii) a rate of increase towards the MSY level for each stock. The Scientific Committee shall advise on a minimum stock level and on a range of rates of increase towards the MSY level under different catch regimes.

[2] At the end of the first year this figure will be reviewed and if necessary amended on the basis of the advice of the Scientific Committee.

§ 351.39 Catch limits for sperm whales.

Catch limits for sperm whales of both sexes shall be set at zero in the Southern Hemisphere for the 1981/82 pelagic season and 1982 coastal seasons and following seasons, and at zero in the Northern Hemisphere for the 1982 and following coastal seasons: except that the catch limits for the 1982 coastal season and following seasons in the Western Division of the North Pacific shall remain undetermined and subject to decision by the Commission following special or annual meetings of the Scientific Committee. These limits shall remain in force until such time as the Commission, on the basis of the scientific information which will be reviewed annually, decides otherwise in accordance with the procedures followed at that time by the Commission.

[48 FR 15130, Apr. 7, 1983]

§ 351.40 Size limits for sperm whales.

(a) It is forbidden to take or kill any sperm whales below 30 feet (9.2 metres) in length except in the North Atlantic Ocean where it is forbidden to take or kill any sperm whales below 35 feet (10.7 metres).

(b) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the Southern Hemisphere north of 40° South Latitude during the months of October to January inclusive.

(c) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the North Pacific Ocean and dependent waters south of 40° North Latitude during the months of March to June inclusive.

TABLE 1 TO SUBPART C—BALEEN WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS (EXCLUDING BRYDE'S WHALES)

	Sei		Minke		Fin		Blue Classification	Humpblack classification	Right bowhead, pygmy right classification	Gray	
	Classification	Catch limit	Classification	Catch limit	Classification	Catch limit				Classification	Catch limit
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season											
Area and longitudes:											
I—120° W. to 60° W.	PS	0	-	624	PS	0	PS	PS	PS	•	•
II—60° W. to 0° W.	PS	0	-	630	PS	0	PS	PS	PS	•	•
III—0° to 70° E.	PS	0	-	1,416	PS	0	PS	PS	PS	•	•
IV—70° E. to 130° E.	PS	0	-	2,095	PS	0	PS	PS	PS	•	•
V—130° E. to 170° W.	PS	0	-	1,445	PS	0	PS	PS	PS	•	•
VI—170° W. to 120° W.	PS	0	-	778	PS	0	PS	PS		•	•
Total catch not to exceed				6,655		0	0	0	0		
Northern Hemisphere—1984 season.											
Arctic	•	•	•	•	•	•	•	•	PS	•	•
North Pacific:											
Whole region	PS	0	•	•	PS	0	PS	PS	PS	•	•
Okhotsk Sea-West Pacific Stock.	•	•	SMS	[1] 421	•	•	•	•	•	•	•
Sea of Japan-Yellow Sea-East China Sea Stock.	•	•	-	[2] 0	•	•	•	•	•	•	•
Remainder	•	•	IMS	[3] 0	•	•	•	•	•	•	•
Eastern Stock	•	•	•	•	•	•	•	•	•	SMS	[4] 179
Western Stock	•	•	•	•	•	•	•	•	•	PS	0
North Atlantic:											
Whole region	•	•	•	•	•	•	PS	PS	PS	•	•
West Greenland Stock.	•	•	-	[5] [6] 300	-	[7] 6	•	•	•	•	•
Newfoundland-Labrador Stock.	•	•	•	•	-	0	•	•	•	•	•
Canadian East Coast Stock.	•	•	-	[3] 0	•	•	•	•	•	•	•
Nova Scotia Stock.	PS	0	•	•	PS	0	•	•	•	•	•

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Central Stock	•	•	–	291	•	•	•	•	•	•	•
East Greenland-Iceland Stock.	•	•	•	•	SMS	167	•	•	•	•	•
Iceland-Denmark Strait Stock.	SMS	[8] 100	•	•	•	•	•	•	•	•	•
Spain-Portugal-British Isles Stock.	•	•	•	•	–	[9] 120	•	•	•	•	•
Northeastern Stock.	•	•	–	635	•	•	•	•	•	•	•
West Norway-Faroe Islands Stock.	•	•	•	•	PS	0	•	•	•	•	•
North Norway Stock.	•	•	•	•	–	0	•	•	•	•	•
Eastern Stock	–	0	•	•	•	•	•	•	•	•	•
Northern Indian Ocean.	•	•	IMS	[8] 0	•	•	PS	PS	PS	•	•

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[1] The total catch of minke whales shall not exceed 1,678 in the five years 1980 to 1984 inclusive.

[2] Provided that the remainder from the previous block quota of 3,634 for the five years 1980 to 1984 inclusive may be taken in the years 1984 and 1985.

[3] Pending a satisfactory estimate of stock size.

[4] Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to § 351.30(b)(3).

[5] The total catch of minke whales shall not exceed 586 in the two years 1984 and 1985 inclusive.

[6] Of the total numbers shown, a proportion corresponding to needs may be taken by aborigines pursuant to § 351.30(b)(4).

[7] Available to be taken by aborigines pursuant to § 351.30(b)(4).

[8] The total catch of sei whales shall not exceed 504 in the six years 1980 to 1985 inclusive.

[9] The total catch of fin whales shall not exceed 270 in the three years 1983 to 1985 inclusive.

[49 FR 1523, Jan. 12, 1984; 49 FR 3086, Jan. 25, 1984]

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TABLE 2 TO SUBPART C—BRYDE'S WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

	Classification	Catch limit
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season		
South Atlantic Stock		0
Southern Indian Ocean Stock.	IMS	[1] 0
South African Inshore Stock		0
Solomon Islands Stock	IMS	[1] 0
Western South Pacific Stock	IMS	[1] 0
Eastern South Pacific Stock	IMS	[1] 0
Peruvian Stock		[2] [3] 165
North Pacific—1984 season		
Eastern Stock	IMS	[1] 0
Western Stock	IMS	536
East China Sea Stock		0

TABLE 2 TO SUBPART C—BRYDE'S WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS—Continued

	Classification	Catch limit
North Atlantic—1984 season	IMS	[1] 0
Northern Indian Ocean—1984 season.		0

[1] Pending a satisfactory estimate of stock size.

[2] Available to be taken in a six month period starting in November 1983.

[3] The catch limit for this stock for the 1985 season will be lower than 165 and thereafter shall be zero until the Commission decides otherwise.

[49 FR 1523, Jan. 12, 1984; 49 FR 3086, Jan. 25, 1984]

TABLE 3 TO SUBPART C—TOOTHED WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

	Sperm		Bottlenose classification
	Classification	Catch limit	
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season			
Division and longitudes:			
1—60° W. to 30° W	-	0	.
2—30° W. to 20° E	-	0	.
3—20° E. to 60° E	-	0	.
4—60° E. to 90° E	-	0	.
5—90° E. to 130° E	-	0	.
6—130° E. to 160° E	-	0	.
7—160° E. to 170° W	-	0	.
8—170° W. to 100° W	-	0	.
9—100° W. to 60° W.	-	0	.
Northern Hemisphere—1984 season			
North Pacific:			
Western Division	-	[1] [2]	
Eastern Division	-	0	.
North Atlantic	-	0	[3] PS
Northern Indian Ocean	-	0	

[1] No whales may be taken from this stock until catch limits including any limitations on size and sex are established by the Commission.

[2] Notwithstanding footnote 1, catch limits for the 1982 and 1983 coastal seasons are 450 and 400 whales respectively, provided that included within each of these catch limits there may be a by-catch of females not to exceed 11.5% and all whaling operations for this species shall cease for the rest of each season when the by-catch is reached.

[3] Provisionally listed as PS for 1984 pending the accumulation of sufficient information for classification.

[49 FR 1523, Jan. 12, 1984; 49 FR 3086, Jan. 25, 1984]

Subpart D—Treatment

§ 351.51 Processing of whales.

(a) It is forbidden to use a factory ship or a land station for the purpose of treating any whales which are classified as Protection Stocks in § 351.34 or are taken in contravention of §§ 351.21, 351.22, 351.23, 351.30, 351.31, 351.32, 351.35, and 351.39 of this part, whether or not taken by whale catchers under the jurisdiction of a Contracting Government.

(b) All other whales taken, except minke whales, shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and of parts of whales intended for human food or feeding animals. A Contracting Government may in less developed regions exceptionally permit treating of whales without use of land stations, provided that such whales are fully utilized in accordance with this section.

(c) Complete treatment of the carcases of "dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

§ 351.52 Regulation of processing.

(a) The taking of whales for treatment by a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is hauled up for treatment.

(b) Whales taken by all whale catchers, whether for factory ships or land stations, shall be clearly marked so as to identify the catcher and to indicate the order of catching.

Subpart E—Supervision and Control

§ 351.61 Inspection.

(a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four-hour inspection provided that at least one such inspector shall be maintained on each catcher functioning as a factory ship. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship; provided that inspectors need not be appointed to ships which, apart from the storage of products, are used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

(b) Adequate inpsection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

(c) There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries: The observers shall be appointed by the Commisson acting through its Secretary and paid by the Government nominating them.

§ 351.62 Remuneration of employees.

Gunners and crews of factory ships, land stations, and whale catchers, shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of lactating whales.

§ 351.63 Measurement of whales.

(a) Whales must be measured when at rest on deck or platform after the hauling out wire and grasping device have been released, by means of a tape-measure made of a non-stretching material. The zero end of the tape-measure shall be attached to a spike or stable device to be positioned on the deck or platform abreast of one end of the whale. Alternatively the spike may be stuck into the tail fluke abreast of the apex of the notch. The tape-measure shall be held taut in a straight line parallel to the deck and the whale's body, and other than in exceptional circumstances along the whale's back, and read abreast of the other end of the whale. The ends of the whale for measurement purposes shall be the tip of the upper jaw, or in sperm whales the most forward part of the head, and the apex of the notch between the tail flukes.

(b) Measurements shall be logged to the nearest foot or 0.1 metres. That is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. Similarly, any whale between 10.15 metres and 10.25 metres shall be logged as 10.2 metres, and any whale between 10.25 metres and 10.35 metres shall be logged as 10.3 metres. The measurement of any whale which falls on an exact half foot or 0.05 metre shall be logged at the next half foot or 0.05 metre, e.g. 76 feet 6 inches precisely shall be logged as 77 feet and 10.25 metres precisely shall be logged as 10.3 metres.

Subpart F—Information Required

§ 351.71 Reports and records.

(a) All whale catchers operating in conjunction with a factory ship shall report by radio to the factory ship:

(1) The time when each whale is taken;

(2) Its species; and

(3) Its marking effected pursuant to § 351.52(b).

(b) The information specified in paragraph (a) of this section shall be entered immediately by a factory ship in a permanent record which shall be available at all times for examination by the whaling inspectors; and in addition there shall be entered in such permanent record the following information as soon as it becomes available:

(1) Time of hauling up for treatment,

(2) Length, measured pursuant to § 351.63,

(3) Sex,

(4) If female, whether lactating,

(5) Length and sex of foetus, if present, and

(6) A full explanation of each infraction.

(c) A record similar to that described in paragraph (b) of this section shall be maintained by land stations, and all of the information mentioned in the said paragraph shall be entered therein as soon as available.

(d) A record similar to that described in paragraph (b) of this section shall be maintained by "small-type whaling" operations conducted from shore or by pelagic fleets, and all of this information mentioned in the said paragraph shall be entered therein as soon as available.

(e) All Contracting Governments shall report to the Commission for all whale catchers operating in conjunction with factory ships and land stations the following information:

(1) Methods used to kill each whale, other than a harpoon, and in particular compressed air, and

(2) Number of whales struck but lost.

(f) A record similar to that described in paragraph (e) of this section shall be maintained by vessels engaged in "small-type whaling" operations and by native peoples taking species listed in § 351.1, and all the information mentioned in the said paragraph shall be entered therein as soon as available, and forwarded by Contracting Governments to the Commission.

§ 351.72 Submission of catch data and notification of closure.

(a) Notification shall be given in accordance with the provision of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of baleen whales by species taken in any waters south of 40° South Latitude by all factory ships or whale catchers attached thereto under the jurisdiction of each Contracting Government, provided that when the number of each of these species taken is deemed by the Bureau of International Whaling Statistics to have reached 85 percent of whatever total catch limit is imposed by the Commission notification shall be given as aforesaid at the end of each day of data on the number of each of these species taken.

(b) If it appears that the maximum catches of whales permitted by § 351.35(a) may be reached before 7th of April of any year, the Bureau of International Whaling Statistics shall determine, on the basis of the data provided, the date on which the maximum catch of each of these species shall be deemed to have been reached and shall notify the master of each factory ship and each Contracting Government of that date not less than four days in advance thereof. The taking or attempting to take baleen whales, so notified, by factory ships or whale catchers attached thereto shall be illegal in any waters south of 40° South Latitude after midnight of the date so determined.

(c) Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

§ 351.73 Submission of statistical data.

(a) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) Concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and

(2) As to the aggregate amounts of oil of each grade and quantities of meal, fertilizer (guano), and other products derived from them, together with

(3) Particulars with respect to each whale treated in the factory ship, land station or "small-type whaling" operations as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus. The data referred to in paragraphs (a)(1) and (3) of this section shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration of whales.

(b) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) The name and gross tonnage of each factory ship, and

(2) For each catcher ship attached to a factory ship or land station:

(i) The dates on which each is commissioned and ceases whaling for the season,

(ii) The number of days on which each is at sea on the whaling grounds each season, and

(iii) The gross tonnage, horsepower, length and other characteristics of each; vessels used only as tow boats should be specified.

(3) A list of the land stations which were in operation during the period concerned, and the number of miles searched per day by aircraft, if any.

(c) The information required under paragraph (b)(2)(iii) of this section should also be recorded together with the following information, in the log book format shown in Appendix A, and forwarded to the Commission:

(1) Where possible the time spent each day on different components of the catching operation, and

(2) Any modifications of the measures in paragraphs (b)(2)(i) through (iii) or (c)(1) or data from other suitable indicators of fishing effort for "small-type whaling" operations.

§ 351.74 Collection of specimens.

(a) Where possible all factory ships and land stations shall collect from each whale taken and report on:

(1) Both ovaries or the combined weight of both testes, and

(2) At least one ear plug, or one tooth (preferably first mandibular).

(b) Where possible similar collections to those described in paragraph (a) of this section shall be undertaken and reported by small-type whaling operations conducted from shore or by pelagic fleets.

(c) All specimens collected under paragraphs (a) and (b) of this section shall be properly labeled with the platform or other identification number of the whale and be appropriately preserved.

(d) Contracting Governments shall arrange for the analysis as soon as possible of the tissue samples and specimens collected under paragraphs (a) and (b) of this section and report to the Commission on the results of such analyses.

§ 351.75 Review of scientific permits.

(a) A Contracting Government shall provide the Secretariat with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. The proposed permits should specify:

(1) Objectives of the research;

(2) Number, sex, size and stock of the animals to be taken;

(3) Opportunities for participation in the research by scientists of other nations; and

(4) Possible effect on conservation of the stock.

(b) Proposed permits shall be reviewed and commented on by the Scientific Committee at annual meetings when possible. When permits would be granted prior to the next annual meeting, the Secretary shall send the proposed permits to members of the Scientific Committee by mail for their comment and review. Preliminary results of any research from the permits should be made available at the next annual meeting of the Scientific Committee.

§ 351.76 Submission of laws and regulations.

A Contracting Government shall transmit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations.

APPENDIX A

INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING 1946, SCHEDULE APPENDIX A—TITLE PAGE

(One logbook per catcher per season)

Catcher name———— Year built———
Attached to expedition/land station —————
Season ——————————————————
Overall length————— Wooden/steel hull
Gross tonnage ——————— ——————————
Type of engine————— H.P.— —
Maximum speed————— Average searching speed———
Asdic set, make and model no. ——————
Date of installation ————— ————————
Make and size of cannon ———————————
Type of first harpoon used ——— explosive/electric/non-explosive
Type of killer harpoon used———————————
Length and type of forerunner ——————————
Type of whaleline ——————————————
Height of barrel above sea level———————
Speedboat used, Yes ☐ No ☐
Name of Captain ——————————————
Number of years experience ——————————
Name of gunner ——————————————
Number of years experience ——————————
Number of crew ——————————————

TABLE 1—DAILY RECORD SHEET

Date———— Catcher name———— Sheet No.————
Searching:
- Time started (or resumed) searching ....
- Time whales seen *or reported to catcher*[1] ....
- Whale species ....
- Number seen and no. of groups ....
- Position found ....
- Name of catcher that found whales ....

Chasing:
- Time started chasing (or confirmed whales) ....
- Time whale shot or chasing discontinued ....
- Asdic used (Yes ☐ No ☐) ....

Handling:
- Time whale flagged or alongside for towing ....
- Serial no. of catch ....

Towing:
- Time started picking up ....
- Time finished picking up or starting towing ....
- Date and time delivered to factory ....

Resting:
- Time stopped (for drifting or resting) ....
- Time finished drifting/resting ....
- Time ceased operations ....

Total searching time ....
Total chasing time:
- (A) With asdic ....
- (B) Without asdic ....

Total handling time ....
Total towing time ....
Total resting time ....
Other time (e.g. bunkering, in port) ....

---

[1] Time whales reported to catcher means the time when the catcher is told of the position of a school and starts to move towards it to chase it.

Weather Conditions

Time	Sea state	Wind force and direction	Visibility

Whales Seen (No. and No. of schools)

Blue ....
Fin ....
Humpback ....
Right ....
Sei ....
Signed ....

Bryde ....
Minke ....
Sperm ....
Others ....
(specify) ....

TABLE 2—SCHOOLING REPORT

To be completed by pelagic expedition or coastal station for each sperm whale school chased. A seperate form to be used each day.

Name of expedition or coastal station ....

Date ———— Noon position of factory ship ....

Time school found ....

Total number of whales in school ....

Number of takeable whales in school ....

Number of whales caught from school by each catcher ....

Name of catcher ....

Name of catcher ....

Name of catcher ....

Name of catcher ....

Total number caught from school ....

Remarks: ....

....

Explanatory Notes

A. Fill in one column for each school chased with number of whales caught by each catcher taking part in the chase; if catchers chase the school but do not catch any whales from it, enter 0; for catchers in fleet which do not chase that school enter X.

B. A school on this form means a group of whales which are sufficiently close together that a catcher having completed handling one whale can start chasing another whale almost immediately without spending time searching. A solitary whale should be entered as a school of 1 whale.

C. A takeable whale is a whale of a size or kind which the catchers would take if possible. It does not necessarily include all whales above legal size, e.g. if catchers are concentrating on large whales only these would be counted as takeable.

D. Information about catchers from other expeditions or companies operating on the same school should be recorded under Remarks.

[45 FR 85031, Dec. 24, 1980, as amended at 47 FR 3794, Jan. 27, 1982]

SUBCHAPTER C—INTERNATIONAL PACIFIC SALMON FISHERIES COMMISSION

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON REGULATIONS

Subpart A—General Provisions

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371.1 Purpose of regulations.
371.2 Scope of regulations.
371.3 Definition of terms.
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371.7 Unlawful possession.
371.8 Forcible assault of enforcement officer.
371.9 Commission regulations.
APPENDIX A—INTERNATIONAL PACIFIC SALMON FISHERIES COMMISSION REGULATIONS

AUTHORITY: 16 U.S.C. 776-776f and 16 U.S.C. 3631-3644.

SOURCE: 45 FR 43768, June 30, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 371.1 Purpose of regulations.

The regulations in this Subpart A implement the Convention between the United States and Canada for the Protection of the Sockeye and Pink Salmon Fisheries of the Fraser River System, and the Sockeye Salmon or Pink Salmon Fishing Act of 1947.

§ 371.2 Scope of regulations.

This Part 371 applies to all fishing for sockeye salmon and pink salmon and related activities conducted in U.S. Convention Waters during the time the Commission exercises jurisdiction over the sockeye salmon and pink salmon fisheries, except that these regulations and Appendix A do not govern fishing by Treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places in accordance with regulations promulgated by the U.S. Department of the Interior (25 CFR Part 256).

§ 371.3 Definition of terms.

When used in this Subchapter C:

(a) *Act* means: the Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f.

(b) *Commission* means: the International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(c) *Convention* means: the Convention between the United States of America and Canada for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries of the Fraser River system, signed at Washington on the 26th day of May, 1930, as amended by the protocol to the convention to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(d) *Convention waters* means: those waters described in Article I of the Convention.

(e) *Enforcement officer* means:

(1) Any enforcement agent of the National Marine Fisheries Service.

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (e)(2) of this section.

(4) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service to enforce the provisions of the Convention, the Commission's regulations, the Act and this Part 371.

(f) *Fish, fishing* means: The fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon or pink salmon in Convention Waters.

(g) *Fishing gear* means: any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used, for the purpose of capturing fish or an aid in capturing fish.

(h) *Gill net* means: gill net as defined in Washington Administrative Code, Chapter 220-16, and lawful gillnet as defined in Washington Administrative Code, Chapter 220-47.

(i) *Person* means: individuals, partnerships, associations, and corporations.

(j) *Pink salmon* means: That species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

(k) *Purse seine* means: Purse seine as defined in Washington Administrative Code, Chapter 220-16 and lawful purse seine as defined in Washington Administrative Code, Chapter 220-47.

(l) *Reef net* means: Reef net as defined in Washington Administrative Code, Chapter 220-16 and lawful reef net as defined in Washington Administrative Code, Chapter 220-47.

(m) *Salmon preserves* means: Salmon preserves defined in Washington Administrative Code, Chapter 220-47.

(n) *Sockeye salmon* means: That species of salmon known by the scientific name *Oncorhynchus nerka.*

(o) *State areas* means: Fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code, Chapter 220-22, as amended.

(p) *Troll line* means: Troll line as defined in Washington Administrative Code, Chapter 220-16 and lawful troll line as defined in Washington Administrative Code, Chapter 220-47.

§ 371.4 Other laws and regulations.

Nothing in Part 371 shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States or of the State of Washington.

§ 371.5 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any person fishing under § 371.9 Commission Regulations (Appendix A) of this Part 371 shall comply with Washington Administrative Code, Chapter 220-69.

(b) Any person fishing under § 371.9, Commission Regulations (Appendix A) of this Part 371, who sells these fish directly to the consumer, restaurant, boathouse or any other retail outlet shall comply with Washington Administrative Code Chapter 220-69.

(c) No person receiving or purchasing sockeye or pink salmon caught in U.S. Convention Waters during the time the Commission exercises control over fishing for sockeye salmon or pink salmon in U.S. waters shall fail to permit enforcement officers to inspect records or reports required by Washington Administrative Code, Chapter 220-69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 371.6 Notice of change in regulations.

The regulations of the Commission regarding the times permissible to fish are subject to frequent change by Emergency Order. Emergency Orders are published by news releases to radio stations and newspapers in the fishing area. In addition, these Emergency Order schedules will be available by calling the National Marine Fisheries Service toll-free telephone Hotline 1-800-562-6513. The Emergency Orders will be effective from the time of publication or as stated in the order until superseded or modified by further action of the Commission.

[45 FR 43768, June 30, 1980, as amended at 46 FR 32869, June 25, 1981]

§ 371.7 Unlawful possession.

No person subject to this Part 371 shall possess or retain on board a fishing vessel a sockeye or pink salmon while engaged in a fishery for other species in U.S. Convention waters during times these waters are closed by the Commission, except that this provision shall not prohibit the direct transport of legally-caught sockeye or pink salmon to off-loading areas.

§ 371.8 Forcible assault of enforcement officer.

No person shall forcibly assault, resist, oppose, impede, intimidate or interfere with an enforcement officer engaged in enforcing the Convention, the Commission's regulations, the Act or this Part 371.

§ 371.9 Commission regulations.

Appendix A sets forth regulations of the Commission for the 1985 fishing season. These regulations, as may be modified from time to time by emergency orders of the Commission and disseminated under § 371.6 of this part, are the "Regulations of the Commission", violation of which is unlawful under the Act.

[50 FR 26211, June 22, 1985]

Appendix A—International Pacific Salmon Fisheries Commission Regulations

1. (1) No person shall retain pink salmon taken by commercial trolling gear in those waters westerly of a straight line drawn from Tatoosh Island Lighthouse in the State of Washington to Bonilla Point in the Province of British Columbia from the 15th day of June, 1985, to the 14th day of July, 1985, both dates inclusive.

(2) Regulatory control of the waters described in subsection (1) of this section shall be relinquished effective 12:01 a.m. September 15, 1985.

2. (1) No person shall fish for sockeye or pink salmon with nets in Puget Sound Salmon Management and Catch Reporting Areas 4B, 5, 6 and 6C from the 23rd day of June, 1985, to the 20th day of July, 1985; from the 11th day of August, 1985, to the 17th day of August, 1985; and from the 25th day of August, 1985, to the 14th day of September, 1985; all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with purse seines in the waters described in subsection (1) of this section:

(a) From the 21st day of July, 1985, to the 10th day of August, 1985, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Tuesday of each week; and

(b) From the 18th day of August, 1985, to the 24th day of August, 1985, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday and Wednesday.

(3) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section.

(a) From the 21st day of July, 1985, to the 27th day of July, 1985, and from the 4th day of August, 1985, to the 10th day of August, 1985, all dates inclusive, except from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday of each week; and

(b) From the 28th day of July, 1985, to the 3rd day of August, 1985, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday; and

(c) From the 18th day of August, 1985, to the 24th day of August, 1985, both dates inclusive, except from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday and from six o'clock in the afternoon of Wednesday to nine o'clock in the forenoon of Thursday.

3. No person shall fish for sockeye or pink salmon with nets in Puget Sound Salmon Management and Catch Reporting Area 6A from the 23rd day of June, 1985, to the 14th day of September, 1985, both dates inclusive.

4. (1) No person shall fish commercially for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A from the 23rd day of June, 1985, to the 20th day of July, 1985; from the 11th day of August, 1985, to the 17th day of August, 1985; and from the 15th day of September, 1985, to the 21st day of September, 1985; all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with purse seines in the waters described in subsection (1) of this section:

(a) From the 21st day of July, 1985, to the 10th day of August, 1985, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Tuesday of each week; and

(b) From the 18th day of August, 1985, to the 14th day of September, 1985, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday and Wednesday of each week.

(3) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 21st day of July, 1985, to the 27th day of July, 1985, and from the 4th day of August, 1985, to the 10th day of August, 1985, all dates inclusive, except from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday of each week; and

(b) From the 28th day of July, 1985, to the 3rd day of August, 1985, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday; and

(c) From the 18th day of August, 1985, to the 24th day of August, 1985, and from the 1st day of September, 1985, to the 7th day of September, 1985, all dates inclusive, except from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday and from six o'clock in the afternoon of Wednesday to nine o'clock in the forenoon of Thursday of each week; and

(d) From the 25th day of August, 1985, to the 31st day of August, 1985, and from the 8th day of September, 1985, to the 14th day of September, 1985, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday and from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday of each week.

(4) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) in this section:

(a) From the 21st day of July, 1985, to the 27th day of July, 1985, and from the 4th day of August, 1985, to the 10th day of August, 1985, all dates inclusive, except from half past seven o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

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(b) From the 28th day of July, 1985, to the 3rd day of August, 1985, both dates inclusive, except from half past six o'clock in the forenoon to eight o'clock in the afternoon of Monday; and

(c) From the 18th day of August, 1985, to the 24th day of August, 1985, and from the 1st day of September, 1985, to the 7th day of September, 1985, all dates inclusive, except from six o'clock in the forenoon to nine o'clock in the afternoon of Monday and from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday of each week; and

(d) From the 25th day of August, 1985, to the 31st day of August, 1985, and from the 8th day of September, 1985, to the 14th day of September, 1985, all dates inclusive, except from half past five o'clock in the forenoon to six o'clock in the afternoon of Monday and from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday of each week.

5. No person shall fish for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Area 7B, except for those sockeye and pink salmon taken in nets having mesh not less than 7 inches as authorized for the taking of chinook salmon by the Director of Fisheries of the State of Washington, from the 23rd day of June, 1985, to the 20th day of July, 1985, both dates inclusive.

6. No person shall fish commercially for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Area 7D from the 23rd day of June, 1985, to the 20th day of July, 1985, both dates inclusive.

7. (1) No person shall fish commercially for sockeye or pink salmon in that portion of the waters described in subsection (1) of section 4 lying northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia from the 25th day of August, 1985, to the 31st day of August, 1985, both dates inclusive.

(2) No person shal fish commercially for sockeye or pink salmon in that portion of the waters described in subsection (1) of section 4 lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia from the 1st day of September, 1985, to the 28th day of September, 1985, both dates inclusive.

8. The following Convention Waters are excluded:

(1) Puget Sound Salmon Management and Catch Reporting Areas 6B, 6D, 7C.

(2) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[50 FR 26211, June 25, 1985]

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CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

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SUBCHAPTER A

PART 401—ANADROMOUS FISHERIES CONSERVATION, DEVELOPMENT AND ENHANCEMENT

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AUTHORITY: Anadromous Fish Conservation Act (79 Stat. 1125, as amended, 84 Stat. 214, 88 Stat. 398), 16 U.S.C. 757a-757f.

SOURCE: 40 FR 26678, June 25, 1975, unless otherwise noted.

§ 401.1 Administration.

The Director of the U.S. Fish and Wildlife Service and the Director of the National Marine Fisheries Service shall jointly administer the Anadromous Fish Conservation Act for the Secretaries.

§ 401.2 Definitions.

As used in this part, terms shall have the meanings ascribed in this section.

(a) *Secretary.* The Secretary of Commerce, the Secretary of the Interior, or their authorized representatives.

(b) *Act.* The Anadromous Fish Conservation Act, 16 U.S.C. 757a through 757f.

(c) *Eligible states.* Any coastal State of the United States, the State of Vermont, and the States bordering the Great Lakes. The area within the Columbia River basin is excluded.

(d) *State fishery agency.* Any department(s), division(s), commission(s), or official(s) of a State empowered under its laws to regulate a commercial or sport fishery.

(e) *Non-Federal interest.* Any organization, association, institution, business, school, individual, or group of individuals, municipality and others outside the Federal Government, in addition to State fishery agencies, which desire to cooperate within the terms of the Act.

(f) *Cooperator.* One or more States acting jointly or severally or other non-Federal interests, participating in a project agreement or grant-in-aid award with the Secretary.

(g) *Anadromous fish.* Aquatic, gill breathing, vertebrate animals bearing paired fins which migrate to and spawn in fresh water, but which spend part of their life in an oceanic environment; also fish in the Great Lakes that ascend streams to spawn.

(h) *Application for Federal assistance.* A description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(i) *Project agreement.* The formal document executed between the Secretary of the Interior and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

(j) *Grant-in-Aid award.* The formal document executed between the Secretary of Commerce and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

§ 401.3 Submission of documents.

Applications for Federal assistance and other documents for projects relating generally to recreational fisheries shall be submitted to the concerned Regional Office of the U.S. Fish and Wildlife Service, or for projects relating generally to commercial fisheries of the concerned Regional Office of the National Marine Fisheries Service.

§ 401.4 Activities prohibited.

Law enforcement, public relations, harvesting, marketing and processing activities, construction of fisherman use facilities, and activities concerned with landlocked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act.

§ 401.5 Coordination with States.

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

[48 FR 29137, June 24, 1983]

§ 401.6 Prosecution of work.

(a) Project work shall be carried through to a state of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory performance reports or failure to complete the project to the satisfaction of the Secretary shall be cause for suspension of Federal assistance for the project until the project provisions are satisfactorily met. Federal assistance may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work at any time.

(b) Research and development work shall be continuously coordinated by the Cooperator with studies conducted by others to avoid unnecessary duplication.

(c) All work shall be performed in accordance with applicable local laws, except when in conflict with Federal laws or regulations, in which case Federal laws or regulations shall prevail.

§ 401.7 General information for the Secretary.

Before any Federal funds may be obligated for any project an applicant shall furnish to the Secretary, upon his request, information regarding the laws affecting anadromous fish and the authority of the applicant to participate in the benefits of the Act.

(a) *Document signature.* Individuals authorized to sign project documents under the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197, as amended), 16 U.S.C. 779 through 779f, or the Federal Aid in Sport Fish Restoration Act (64 Stat. 430, as amended), 16 U.S.C. 777 through 777f, may likewise sign project documents contemplated in this part.

(b) *Program information.* The Secretary may, from time to time, request, and the Cooperators shall furnish, information relating to the administration and maintenance of any project established under the Act.

§ 401.8 Availability of funds.

The period of availability of funds to the States or other non-Federal interests for obligation shall be established by the administering Federal agency.

§ 401.9 Payments to cooperators.

Payments shall be made to Cooperators in accordance with provisions of grant-in-aid awards or project agreements.

§ 401.10 Request for payment.

Request for payment shall be on forms provided by the Secretary, certified as therein prescribed, and submitted to the Regional Director by the Cooperator.

§ 401.11 Property as matching funds.

The non-Federal share of the cost of projects may be in the form of real or personal property. Specific procedures to be used by grantees in placing the value on real or personal property for matching funds are set forth in Attachment F of Federal Management Circular 74-7.

§ 401.12 Ownership of property.

When real property is acquired pursuant to the provisions of the Act, title to such property, or interests therein, shall be vested in the United States, and the conveying instrument shall recite the United States of America as the grantee. However, if the Secretary determines that under the terms of the application for Federal assistance and grant-in-aid award or project agreement, the intent and purpose of the Act may be better served by other ownership of such property, an appropriate transfer may be made. When real or personal property is utilized as matching funds, title to such property shall be in the Cooperator unless otherwise specified in the grant-in-aid award or project agreement.

§ 401.13 Personnel.

The Cooperator shall maintain an adequate and competent force of employees to initiate and carry approved work to satisfactory completion.

§ 401.14 Inspection.

Cooperator supervision of each project shall include adequate and continuous inspection. The project will be subject at all times to Federal inspection.

§ 401.15 Record retention.

All records of accounts and reports with supporting documentation thereto, as set forth in Attachment C of Federal Management Circular 74-7, will be retained by the Cooperator for a period of 3 years after submission of the final expenditure report on the project. Record retention for a period longer than 3 years is required if audit findings have not been resolved.

§ 401.16 Records and reporting.

Performance reports and other reports shall be furnished as requested by the Secretary. Cost records shall be maintained separately for each project. The accounts and records maintained by the Cooperator, together with all supporting documents, shall be open at all times to the inspection of authorized representatives of the United States, and copies thereof shall be furnished when requested.

(Approved by the Office of Management and Budget under control number 0648-0102)

[40 FR 26678, June 25, 1975, as amended at 48 FR 57302, Dec. 29, 1983]

§ 401.17 Safety and accident prevention.

In the performance of each project, the Cooperator shall comply with all applicable Federal, State, and local laws governing safety, health and sanitation.

§ 401.18 Contracts.

A Cooperator may use its own regulations or guidelines in obtaining services by contract or otherwise, provided that they adhere to applicable Federal laws, regulations, policies, guidelines, and requirements, as set forth in Attachment 0 of Federal Management Circular 74-7. However, the Cooperator is the responsible authority, without recourse to the Federal agency, regarding the settlement of such contractual issues.

§ 401.19 Statements and payrolls.

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as amended, are made a part of the regulations in this part by reference. The Cooperator will comply with the regulations in this part and any amendments or modifications thereof, and the Cooperator's prime contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitation, variations, tolerances, and exemptions.

§ 401.20 Officials not to benefit.

No Member of, or Delegate to, Congress, or resident Commissioner, shall be admitted to any share or any part of any project agreement made under the Act, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

§ 401.21 Patents and inventions.

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the "Government Patent Policy" (President's memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

§ 401.22 Civil rights.

Each application for Federal assistance, grant-in-aid award, or project agreement shall be supported by a statement of assurances executed by the Cooperator providing that the project will be carried out in accordance with Title VI, Nondiscrimination in federally Assisted Programs of the Civil Rights Act of 1964 and with the Secretary's regulations promulgated thereunder.

§ 401.23 Audits.

The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P OMB Circular A-102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

[49 FR 30074, July 26, 1984]

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973

Sec.
402.01 Scope.
402.02 Definitions.
402.03 Applicability to previously initiated actions.
402.04 Consultation.

AUTHORITY: Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SOURCE: 43 FR 874, Jan. 4, 1978, unless otherwise noted.

§ 402.01 Scope.

This part interprets and implements section 7 of the Endangered Species Act of 1973 (hereinafter the Act). Section 7 (16 U.S.C. 1536) applies to all listed species of fish, wildlife, or plants and imposes three burdens upon the Federal agencies. First, it directs them to utilize their authorities to carry out conservation programs for listed species. Such affirmative conservation programs must comply with any applicable permit requirements of 50 CFR Parts 17, 220, 222 and 227 for listed species and should be fully coordinated with the appropriate Director. Second, it requires every Federal agency to insure that its activities or programs in the United States, upon the high seas, and in foreign countries will not jeopardize the continued existence of a listed species. And third, section 7 directs all Federal agencies to insure that their activities or programs do not result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service and the National Marine Fisheries Service share responsibilities for the Act. A Federal agency can determine which Service to initiate consultation with by scanning the list of species under the jurisdiction of the National Marine Fisheries Service located at 50 CFR 222.23(a) and 227.4. If the Federal agency's activity or program may affect a listed species which is cited in 50 CFR 222.23(a) or 227.4, then the agency shall initiate consultation with the National Marine Fisheries Service. If the listed species is not cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall initiate consultation with the Fish and Wildlife Service.

§ 402.02 Definitions.

"Activities or programs" means all actions of any kind authorized, funded, or carried out by Federal agencies, in whole or in part, examples of which include, but are not limited to:

(1) Actions intended to conserve listed species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (4) actions directly or indirectly causing modifications to the land, water, or air.

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or set-

tlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constitutent elements of critical habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

"*Destruction or adverse modification*" means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 402.05(b). There may be many types of activities or programs which could be carried out in critical habitat without causing such diminution.

"*Director or Regional Director*" means the Director or one of the Regional Directors of the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for purposes of consultation.

"*Federal agency*" means each authority of the Government of the United States except for the Congress, the Courts of the United States, the Governments of the Territories, Commonwealths, or possessions of the United States, or the Government of the District of Columbia.

"*Jeopardize the continued existence of*" means to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute "jeopardy" would be expected to vary among listed species.

"*Listed species*" means any species of fish, wildlife, or plant which is designated as endangered or threatened under the Act.

"*Recovery*" means improvement in the status of listed species to the point at which listing is no longer required.

§ 402.03 Applicability to previously initiated actions.

Section 7 applies to all activities or programs where Federal involvement or control remains which in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat.

§ 402.04 Consultation.

(a) *Initiation*. (1) It is the responsibility of each Federal agency to review its activities or programs and to identify any such activity or program that may affect listed species or their habitat. Reviewing Federal agencies may obtain advice from the Service, but this is supplemental to, and not a substitute for, the formal consultation process set forth in this part. Where a Federal agency funds or authorizes an activity or program to be carried out by a non-Federal entity, the Federal agency shall initiate the formal consultation process and not the non-Federal entity.

(2) If a Federal agency decides that its activities or programs will not affect listed species or their habitat, consultation shall not be initiated unless requested by the Service.

(3) When a Federal agency identifies activities or programs that may affect listed species or their habitat, the agency shall convey a written request for consultation with available information to: the Regional Director for the Region where the activity or program is or will be carried out; or to the Director or Regional Director for the Region where the Federal agency is headquartered, if more than one Region is involved; or to the Director if foreign countries or the high seas are involved. In addition, if foreign countries or the high seas are involved, a copy of the request for consultation and all subsequent correspondence shall be forwarded to the Secretary of State c/o the Director, Office of Environmental Affairs. Any request for consultation may encom-

pass, subject to the approval of the Director or Regional Director, a number of similar individual activities within a given geographical area, administrative unit, or segment of a comprehensive plan. Until consultation has been completed and a biological opinion issued, good faith consultation shall preclude a Federal agency from making an irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

(4) In addition, the Director or Regional Director will request initiation of consultation if he identifies any activity or program of a Federal agency that has not received prior consultation and that may affect listed species or their habitat.

(5) Informal consultation may be initiated at the field level between the Service and the Federal agencies or their authorized representatives. Such informal consultation is supplemental to, and not a substitute for, the formal consultation process set forth in this part.

(b) *Form.* (1) Consultation under section 7 may be consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The satisfaction of the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligation to comply with the consultation procedures set forth in this part.

(2) When particular programs or activities involve more than one Federal agency, these agencies may, upon notification of the Director or Regional Director, fulfill their consultation responsibilities through a single lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies become involved, the magnitude of their respective involvement and their relative expertise with respect to the environmental effects of the activity or program.

(c) *Assistance from the Service.* It is the primary responsibility of each Federal agency requesting consultation to conduct the appropriate studies and to provide the biological information necessary for an adequate review of the effect an identified activity or program has upon listed species or their habitat. To the extent it is available, the Service will upon request provide all relevant data and reports, personnel, and recommendations for additional studies or surveys, but the Service is not obligated to fund any such additional studies or surveys.

(d) *Assistance from other sources.* Federal agencies may seek assistance from any source to obtain the biological information necessary for a review of the effect an activity or program has upon listed species or their habitat. Such assistance may include, but is not limited to, that obtained by contract or required by regulations of the Federal agency. Although it may authorize a non-Federal representative to participate in the consultation process pursuant to approved counterpart regulations, the ultimate responsibility for compliance with the procedures of this section remains with the Federal agency and cannot be delegated by it.

(e) *Threshold examination.* Upon receipt of a written request for consultation, the Director or Regional Director will conduct a threshold examination of the identified activity or program. A threshold examination will include a review of available information and may include an on-site inspection of the area.

(1) If, in the opinion of the Director, an identified activity or program will promote the conservation of listed species, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated, and additional section 7 consultation shall be unnecessary. The Service, to the extent feasible, will assist in carrying out such programs if requested by the Federal agency.

(2) If an identified activity or program is not specifically for the conservation of listed species, but the Director or Regional Director concludes from the threshold examination that the activity or program is not likely to jeopardize the continued existence of a listed species or result in the destruc-

tion or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated and further section 7 consultation shall be unnecessary.

(3) If an identified activity or program is not specifically for the conservation of listed species and the Director or Regional Director concludes from the treshold examination that the activity or program is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated and further section 7 consultation shall be unnecessary.

(4) The biological opinions issued pursuant to paragraphs (e) (1), (2) and (3) of this section shall be accompanied by a statement of the facts and documentation on which they are based and may include recommendations for modifications in the identified activity or program which would enhance the conservation and protection of a listed species or its critical habitat. Such opinions will be released pursuant to the Freedom of Information Act.

(f) *Further consultation.* If the Director or Regional Director determines as a result of the threshold examination that insufficient information exists to conclude that an identified activity or program is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the Federal agency will be so notified in writing within 60 days after formal consultation is initiated. The Federal agency, with assistance as feasible from the Service and other sources of expertise, shall then obtain additional information and conduct, as appropriate, biological surveys or studies to determine how the activity or program may affect listed species or their critical habitat. Within 60 days of receipt of adequate information and documentation, unless special circumstances require negotiation of a longer period, the Service will end consultation by issuing a biological opinion pursuant to the provisions of paragraphs (e) (1), (2), (3), and (4) of this section, as appropriate.

(g) *Responsibilities after consultation.* Upon receipt and consideration of the biological opinion and recommendations of the Service, it is the responsibility of the Federal agency to determine whether to proceed with the activity or program as planned in light of its section 7 obligations. Where the consultation process has been consolidated with interagency cooperation required by other statutes such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the final biological opinion and recommendations of the Service shall be stated in the documents required by those statutes.

(h) *Reinitiation.* Consultation shall be reinitiated by the Service or by the Federal agency if: (1) New information reveals impacts of the identified activity or program that may affect listed species or their habitats;

(2) The identified activity or program is subsequently modified, whether as a result of a biological opinion issued after consultation or not; or

(3) A new species is listed that may be affected by the identified activity or program.

(i) *Counterpart regulations.* The consultation procedures set forth in this section may be superseded for a particular Federal agency by joint counterpart regulations drafted by that agency and the Fish and Wildlife Service and the National Marine Fisheries Service. Such counterpart regulations shall be published in the FEDERAL REGISTER as proposed and final rulemakings and shall provide for a minimum 60-day period for public comment.

PART 403—TRANSFER OF MARINE MAMMAL MANAGEMENT AUTHORITY TO STATES

Sec.

403.01 Purpose and scope of regulations.
403.02 Definitions.
403.03 Review and approval of state request for management authority.
403.04 Determinations and hearings under section 109(c) of the MMPA.

Sec.
403.05 State and Federal responsibilities after transfer of management authority.
403.06 Monitoring and review of state management program.
403.07 Revocation and return of state management authority.
403.08 List of states to which management has been transferred.

AUTHORITY: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

SOURCE: 48 FR 22456, May 18, 1983, unless otherwise noted.

§ 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this part shall prevent:

(1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with § 18.22 or § 216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§ 403.03, 403.06, and 403.07 of this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this part:

(a) The term "species" includes any population stock.

(b) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(c) "State management program" means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) "State regulation" means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

(e) The "Act" means the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

(f) The " Secretary" means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members other than walruses, of the order Pinnipedia; the Secretary of the Interior has jurdisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The "Service" or "Services" means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this part to be made by the "Service" must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegees, as appropriate.

§ 403.03 Review and approval of state request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service ("Assistant Administrator") for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraphs (d) (1) through (3) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 403.04 of this part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 403.05(a) of this part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to § 403.04 of this part; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;

(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under § 18.31 or § 216.31 of this title; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.

(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to § 403.04.

(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to § 403.05(a) of this part.

(5) Procedures for the submission of an annual report meeting the requirements of § 403.06(b) of this part to the appropriate Service regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that

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apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species:

(1) A statute and regulations concerning the take of marine mammals that ensure that

(i) The taking of marine mammals species for subsistence uses will be the priority consumptive uses of the species;

(ii) If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and

(iii) The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;

(2) Statutes or regulations that ensure that the appropriate state agency will

(i) Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;

(ii) Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and

(iii) Make written findings supporting the authorizations and regulations described in this paragraph based solely on the administrative record before the agency;

(3) A narrative discussion of the statutes or regulations required under paragraph (d)(2) of this section, and any additional policies or procedures concerning the regulation of nonsubsistence consumptive uses of marine mammals. This discussion must explain how the State's program satisfies the requirements of section 109(f) of the Act, namely that the regulation of nonsubsistence consumptive uses of marine mammals provides, to the maximum extent praticable, economic opportunities for the residents of rural coastal villages of Alaska who engage in subsistence uses of the species.

(e) To assist states in preparing the state management program for submission, the Service will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Services. Notwithstanding preliminary review by the Service, once any proposed aspect of the state management program has been prepared and submitted in final form, it shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f)(1) After receiving the state's request, for management authority, the Service shall make an initial determination on whether the state's management program meets the requirements of the Act and these regulations.

(2) Within 45 days after receiving the state's request, unless the state

and the Service agree to another time period, the Service shall publish a general notice of its initial determination in the FEDERAL REGISTER together with, in the case of a positive determination, the text of a proposed rule to transfer management authority to the state. The general notice shall contain a summary of the major components of the state's management program and shall indicate where the full text of the management program may be inspected or copied. The public shall be allowed to submit written comments and to request an informal public hearing on the Service's initial determination and the state's management program within 60 days of publication of the general notice.

(g) If requested, the Service may conduct an informal public hearing after publishing 30 days' advance notice of the date, location, and time of such hearing in the FEDERAL REGISTER.

(h) After considering all comments and other relevant information, the Service shall publish in the FEDERAL REGISTER its final determination on whether the state has developed and will implement a management program that meets the requirement of the Act and these regulations. In the case of a positive final determination, the Service shall publish with the notice a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(1) The state's determinations pursuant to § 403.04 of this part are final and implemented under state law;

(2) Any cooperative allocation agreement required under § 403.05(a) of this part is implemented; and,

(3) The state has enacted and submitted to the Service laws and policies that are substantially the same as those provided pursuant to § 403.03(a) in proposed form in the state's management program.

§ 403.04 Determinations and hearings under section 109(c) of the MMPA.

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determination by the State.* The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of:

(1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that nay be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any of copies of such documentation. The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notificed the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The state agency shall provide for either:

(i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the state agency; or

(ii) Review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency must be made solely on the basis of the record developed at the hearing. The state agency in making its final determinations, and/or presiding officer(s) in making his (their) recommended determinations, may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The state agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Service and the public of its final determinations and shall provide access to or copies of its decision document and Hearing Record.

(h) *Judicial review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2)(A) through (E).

§ 403.05 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by section 403.04 of this part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the state's regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species:

(1) The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

(2) The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been transferred to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 403.06 Monitoring and review of state management program.

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state's first full fiscal or calendar year following the effective date of the Service's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The repot shall contain the following information current for each reporting period:

(1) Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to § 403.03(b), and, in the case of Alaska, § 403.03(d), of this part;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repealers, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of § 403.03 of this part that may impair the State's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 403.04 of this part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, or, as appropriate, at the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, and at the appropriate Service's regional office.

§ 403.07 Revocation and return of state management authority.

(a) *Revocation of management.* The Service shall have responsibility to review management of a species transferred to a state under this part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this part and the state's approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this part, or the state's approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether or not the state continues to comply with the requirements of the Act, this part and the state's approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this part or the state's approved management program, it shall provide written notice to the state of its intent

to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the FEDERAL REGISTER and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the provision of the Act, this part and the state's approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the FEDERAL REGISTER.

(b) *Voluntary return of management authority to the Service.* (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the FEDERAL REGISTER to this effect no sooner than 30 days (except in an emergency as determined by the Service) nor longer than 60 days after the state has provided notice of its intent to return management or unless otherwise agreed upon.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management program, it shall so notify the Service together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 403.06(c)(1) of this part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the state, notwithstanding the requirements of § 403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with the requirements of the Act and this part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

§ 403.08 List of states to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed and, where appropriate, cooperative allocation agreements pursuant to § 403.05(c) are in force: [Reserved].

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

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424.20 Emergency rules.
424.21 Periodic review.

AUTHORITY: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

SOURCE: 49 FR 38908, Oct. 1, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that pertain to the listing of species and the determination of critical habitats.

§ 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this Part 424, except as otherwise stated.

(b) "Candidate" means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) "Conservation," "conserve," and "conserving" mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) "Critical habitat" means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

(e) "Endangered species" means a species that is in danger of extinction throughout all or a significant portion of its range.

(f) "List" or "lists" means the Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

(g) "Plant" means any member of the plant kingdom, including, without limitation, seeds, roots, and other parts thereof.

(h) "Public hearing" means an informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

(i) "Secretary" means the Secretary of the Interior or the Secretary of Commerce, as appropriate, or their authorized representatives.

(j) "Special management considerations or protection" means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

(k) "Species" includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) "State agency" means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(m) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(n) "Wildlife" or "fish and wildlife" means any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Subpart B—Revision of the Lists

§ 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40-17.48 and Parts 222 and 227) applied to a threatened species only in accordance with the procedures of this part.

§ 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section *solely* on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Over utilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction.* Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery.* The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial

data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(e) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see Part 23 of this Title 50) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

§ 424.12 Criteria for designating critical habitat.

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species.

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Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.*, trees, sand bars) shall not be used in defining critical habitat.

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

EXAMPLE: Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated critical habitat if it were concluded that the upland areas were essential to the conservation of an aquatic species located in the ponds and lakes.

(e) The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

(f) Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated.

(g) Existing critical habitat may be revised according to procedures in this section as new data become available to the Secretary.

(h) Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

§ 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

§ 424.14 Petitions.

(a) *General.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) *Petitions to list, delist, or reclassify species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. For the purposes of this section, "substantial information" is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making a finding under paragraph (b)(1) of this section, the Secre-

tary shall consider whether such petition—

(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;

(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) Provides information regarding the status of the species over all or a significant portion of its range; and

(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the FEDERAL REGISTER a proposed regulation to implement the action pursuant to § 424.16 of this part, or

(iii) The petitioned action is warranted, but that—

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and

(B) Expeditious progress is being made to list, delist, or reclassify qualified species,

in which case, such finding shall be promptly published in the FEDERAL REGISTER together with a description and evaluation of the reasons and data on which the finding is based.

(4) If a finding is made under paragraph (b)(3)(iii) of this section with regard to any petition, the Secretary shall, within 12 months of such finding, again make one of the findings described in paragraph (b)(3) with regard to such petition, but no further finding of substantial information will be required.

(c) *Petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scienific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making the finding required by paragraph (c)(1) of this section, the Secretary shall consider whether a petition contains—

(i) Information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

(3) Within 12 months after receiving a petition found under paragraph (c)(1) of this section to present substantial information indicating that revision of a critical habitat may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the FEDERAL REGISTER.

(d) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

§ 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the FEDERAL REGISTER. The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

(c) Such notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any foreign countries in which the subject species normally occur.

§ 424.16 Proposed rules.

(a) *General.* Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.

(c) *Procedures*—(1) *Notifications.* In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the FEDERAL REGISTER;

(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) *Period of public comments.* At least 60 days shall be allowed for public comment following publication in the FEDERAL REGISTER of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the FEDERAL REGISTER. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the FEDERAL REGISTER, and shall specify the basis for so doing.

(3) *Public hearings.* The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the FEDERAL REGISTER not less than 15 days before the hearing is held.

§ 424.17 Time limits and required actions.

(a) *General.* (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the Secretary shall publish one of the following in the FEDERAL REGISTER:

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) *Critical habitat designations.* A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,

in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the FEDERAL REGISTER. This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat will also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversly modify such habitat or be affected by such designation.

(b) *Effective date.* A final rule shall take effect—

(1) Not less than 30 days after it is published in the FEDERAL REGISTER, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the FEDERAL REGISTER of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with § 424.16(c)(1)(ii).

(c) *Disagreement with State agency.* If a State agency, given notice of a proposed rule in accordance with § 424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with § 424.14, the Secretary shall provide such agency with a written justification for the failure to adopt a rule consistent with the agency's comments or petition.

§ 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

§ 424.20 Emergency rules.

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in § 424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the FEDERAL REGISTER. In the case of any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the FEDERAL REGISTER of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§ 424.16, 424.17, 424.18, and 424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

§ 424.21 Periodic review.

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§ 424.11, 424.16, and 424.17 of this part, as appropriate. A notice announcing those species under active review will be published in the FEDERAL REGISTER. Notwithstanding this section's provisions, the Secretary may review the status of any species at any time based upon a petition (see § 424.14) or upon other data available to the Service.

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

PART 450—GENERAL PROVISIONS

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 450.01 Definitions

The following definitions apply to terms used in this subchapter.

"*Act*" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.

"*Agency action*" means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

"*Alternative courses of action*" means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisidiction.

"*Benefits*" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

"*Biological assessment*" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

"*Biological opinion*" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

"*Chairman*" means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

"*Committee*" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

"*Critical habitat*" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

"*Destruction or adverse modification*" is defined at 50 CFR 402.02.

"*Federal agency*" means any department, agency or instrumentality of the United States.

"*Irreversible or irretrievable commitment of resources*" means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

"*Jeopardize the continued existence of*" is defined at 50 CFR 402.02.

"*Mitigation and enhancement measures*" means measures, including live propagation, tranplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

"*Permit or license applicant*" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

"*Person*" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

"*Proposed action*" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

"*Secretary*" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

"*Service*" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

"*To the extent that such information is available to the applicant*" means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

[50 FR 8126, Feb. 28, 1985]

PART 451—APPLICATION PROCEDURE

Sec.
451.01 Definitions.
451.02 Applications for exemptions.
451.03 Endangered Species Committee.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

SOURCE: 50 FR 8127, Feb. 28, 1985, unless otherwise noted.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, D.C. 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20030.

(c) *Who may apply.* (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary's opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent known.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(vii) A description of all alternatives considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.

(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A complete discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A complete statement explaining why the proposed action is in the public interest.

(v) A complete explanation of why the action is of regional or national significance.

(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) *Review of the application by the Secretary.* (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d) and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (e) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with Part 452.

(g) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02.

(h) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the FEDERAL REGISTER (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Committee upon receipt of an application for exemption.

(i) The information collection requirements contained in Part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 451.03 Endangered Species Committee.

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY

Sec.

452.01 Purpose and scope.
452.02 Definitions.
452.03 Threshold review and determinations.
452.04 Secretary's report.
452.05 Hearings.
452.06 Parties and intervenors.
452.07 Separation of functions and *ex parte* communications.
452.08 Submission of Secretary's report.
452.09 Consolidated and joint proceedings.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

SOURCE: 50 FR 8129, Feb. 28, 1985, unless otherwise noted.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Threshold determinations.* Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources, and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) *Burden of proof.* The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) *Negative finding.* If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary's denial shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(d) *Positive finding.* If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) *Secretary of State opinion.* The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Secretary's report.

(a) *Contents of the report.* If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) *Preparation of the report.* The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) *Hearings.* (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by § 451.02(e)(5). This information will be made part of the record.

(b) *Prehearing conferences.* (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Hearings and prehearing conferences will be announced by a notice in the FEDERAL REGISTER stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) *Conduct of hearings.*—(1) *Admissibility of evidence.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) *Applicant responsibility.* In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) *Open meetings and record.* All hearings and all hearing records shall be open to the public.

(g) *Requests for information, subpoenas.* (1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(h) *Information collection.* The information collection requirements contained in § 452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 452.06 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor's participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) *Separation of functions.* (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex parte communications.* The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

§ 452.08 Submission of Secretary's report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary's report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under § 452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.

453.01 Purpose.
453.02 Definitions.
453.03 Committee review and final determinations.
453.04 Committee information gathering.
453.05 Committee meetings.
453.06 Additional committee powers.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

SOURCE: 50 FR 8130, Feb. 28, 1985, unless otherwise noted.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Final determinations.* Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:

(1) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and.

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) *Decision and order.* The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the FEDERAL REGISTER as soon as practicable.

(c) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action (1) regardless of whether the species was identified in the biological assessment, and (2) only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if (i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and (ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent. If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) *Finding by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the FEDERAL REGISTER inviting written submissions from interested persons. The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the FEDERAL REGISTER a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpoenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

CHAPTER V—MARINE MAMMAL COMMISSION

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PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

§ 501.1 Purpose and scope.

(a) *Purpose.* The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the "Commission") under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the "Act") by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to the purposes for which they were collected.

(b) *Scope.* These rules apply only to "record" contained in "systems of records," defined by the Act as follows:

> The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
>
> The term "system of records" means of group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the FEDERAL REGISTER, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

§ 501.2 Definitions.

(a) As used in this part:

(1) The term "Act" means the Privacy Act of 1974, 5 U.S.C. 552a.

(2) The term "Commission" means the Marine Mammal Commission.

(3) The term "Director" means the Executive Director of the Marine Mammal Commission.

(4) The term "Privacy Officer" means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).

§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the FEDERAL REGISTER, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the FEDERAL REGISTER. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

§ 501.4 Requests for access—times, places and requirements for identification of individuals.

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006, between the hours of 9 a.m. and 5 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5(d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual's photograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of ———— County of ————: ss (Name of individual) who affixed (his) (her) signature below in my presence, came before me, a (Title), in the aforesaid County and State, this —— day of ——, 19—, and established (his)(her) identity to my satisfaction.

My Commission expires ————.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

§ 501.5 Disclosure of requested information.

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any portion of a record, notice of denial shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;

(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;

(3) A statement that the denial may be appealed to the Director;

(4) A statement of what steps must be taken to perfect an appeal to the Director; and,

(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

(d) Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in § 501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the FEDERAL REGISTER, the type of record in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;

(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,

(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

§ 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:

(1) Make the requested amendment or correction, in whole or in part, and advise the individual in writing of such action; or,

(2) Advise the individual in writing that the request has been initially denied, in whole or in part, stating, with respect to those portions denied:

(i) The date of the denial;

(ii) The reasons for the denial, including a citation to an appropriate section of the Act and these Rules; and,

(iii) The right of the individual to prosecute an appeal and to obtain judicial review should a final denial result from the appeal.

(c) In reviewing a request for amendment or correction of a record, the Privacy Officer shall consider the following criteria:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information sought to be amended or corrected;

(3) The relevance and necessity of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(4) The timeliness and currency of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(5) The completeness of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual. If an amendment or correction is otherwise permissible under the Act and other relevant statutes, a request shall be denied only if the individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment or correction in light of these criteria.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;

(2) A copy of the initial denial; and

(3) A precise statement of the reasons for the individual's belief that the denial is in error, referring specifically to the criteria contained in § 501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in § 501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform the individual of his or her right to submit to the Privacy Officer, for inclusion in the record, a concise statement of grounds for disagreement with the final determination. Receipt of any such statement shall be acknowledged by the Privacy Officer, and all subsequent and prior users of the record shall be provided copies of the statement. The notice shall also inform the individual of his or her right, under 5 U.S.C. 552a(g)(1), to obtain judicial review of the final determination.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.9 Fees.

A fee of $0.10 shall be charged for each copy of each page of a record made, by photocopy or similar process, at the request of an individual. No fee shall be charged for copies made at the initiative of the Commission incident to granting access to a record. A total copying fee of $2.00 or less may be waived by the Privacy Officer, but fees for all requests made contemporaneously by an individual shall be aggregated to determine the total fee.

[41 FR 5, Jan. 2, 1976]

PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec.

510.1 Purpose.
510.2 Scope.
510.3 Definitions.
510.4 Calling of meetings.
510.5 Notice of meetings.
510.6 Public participation.
510.7 Closed meetings.
510.8 Minutes.
510.9 Uniform pay guidelines.

AUTHORITY: Sec. 8(a), Federal Advisory Committee Act, 5 U.S.C. App. I.

SOURCE: 41 FR 3306, Jan. 22, 1976, unless otherwise noted.

§ 510.1 Purpose.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5 U.S.C. Appendix I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.2 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.3 Definitions.

For the purposes of this part,

(a) The term "Act" means the Federal Advisory Committee Act, 5 U.S.C. Appendix I;

(b) The term "Chairperson" means each person selected to chair an advisory committee established by the Commission;

(c) The term "Commission" means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term "committee" means any advisory committee reporting to the Commission; and

(e) The term "Designee" means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the "agency head."

§ 510.4 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to § 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the Freedom of Information Act, 5 U.S.C. 552(b).

[41 FR 3306, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

§ 510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to § 510.7.

§ 510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time constraints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§ 510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§ 510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. Appendix I.

PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.

520.1 Purpose.
520.2 Scope.
520.3 Definitions.
520.4 Availability of materials.
520.5 Administrative appeal.
520.6 Extension of time.
520.7 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 41 FR 3307, Jan. 22, 1976, unless otherwise noted.

§ 520.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

§ 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER; to the Commission's administrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1) (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 520.3 Definitions.

As used in these regulations:

(a) The term "Commission" means the Marine Mammal Commission;

(b) The term "Director" means the Executive Director of the Marine Mammal Commission;

(c) The term "exempt materials" means those materials described in § 520.2(b);

(d) The term "non-exempt materials" refers to all materials described in § 520.2(a), but not included in § 520.2(b); and

(e) The term "General Counsel" means the General Counsel of the Marine Mammal Commission.

§ 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, D.C. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.

(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, DC 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.

(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in § 520.2(a); if it is, the request shall be granted unless the material is exempted by § 520.2(b). If the material requested is not of a type described in § 520.2(a), or is the subject of one or more exemptions, the request shall be denied.

(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in § 520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.

(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under § 520.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in § 520.4(f).

(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 520.5, to appeal the denial to the Director.

§ 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with § 520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

§ 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in § 520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) *Search:* $4.00 per person-hour for clerical time; $8.00 per person-hour for professional or supervisory time;

(2) *Duplication:* $0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

[41 FR 3307, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
530.1 Purpose.
530.2 Ensuring that environmental documents are actually considered in agency decision-making.
530.3 Typical classes of action.
530.4 Environmental information.

AUTHORITY: National Environmental Policy Act, Pub. L. 91-190; 42 U.S.C. 4321 et seq.

SOURCE: 44 FR 52837, Sept. 11, 1979, unless otherwise noted.

§ 530.1 Purpose.

The purpose of this part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions identified in section 1507.3(b) of the regulations which are applicable to the activities of the Commission in light of its statutory functions and responsibilities.

§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decisionmaking. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b)(2), in conjunction with section 1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS's or environmental assessments. As a general matter, the Commission's activities do not include actions for which EIS's or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission's activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS's, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission's compliance with NEPA.

PART 540—INFORMATION SECURITY

Sec.
540.1 Policy.
540.2 Program.
540.3 Procedures.

AUTHORITY: Executive Order 12356.

EDITORIAL NOTE: Nomenclature changes affecting Part 540 appear at 47 FR 55489, Dec. 10, 1982.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12356 in matters relating to national security information.

[44 FR 55381, Sept. 26, 1979]

§ 540.2 Program.

The Executive Director is designated as the Commission's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the Commission's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12356, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

[44 FR 55381, Sept. 26, 1979]

§ 540.3 Procedures.

(a) *Mandatory declassification review.* All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Exective Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12356, unless the fact of its existence or nonexistence would itself be classified under Executive Order 12356. Requests for declassification shall be acted upon promptly providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director will refer all requests for national security information in its custody to the Federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12356 and that agency's regulations and guidelines.

(b) *Exceptional cases.* When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall ensure that it is protected in accordance with Executive Order 12356 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency's regulations and guidelines.

(c) *Derivative classification.* Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12356, Section 2-1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;

(2) The identity of the Commission employee originating the derivatively classified document;

(3) The dates or events for declassification or review for declassification indicated on the classified source material; and

(4) Any additional authorized markings appearing on the source material.

(d) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12356, its implementing directives, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) *Storage.* All classified documents shall be stored in the combination safe located in the Commission's offices. The combination shall be changed as required by ISOO Directive No. 1, dated June 23, 1982. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12356 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) *Agency terminology.* The use of the terms "Top Secret", "Secret", and "Confidential" shall be limited to materials classified for national security purposes.

[44 FR 55381, Sept. 26, 1979, as amended at 47 FR 55489, Dec. 10, 1982; 48 FR 44834, Sept. 30, 1983]

PART 550—[RESERVED]

PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

560.1 Purpose and scope.
560.2 Definitions.
560.3 Open meetings.
560.4 Notice of meetings.
560.5 Closed meetings.
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560.7 Recordkeeping requirements.
560.8 Public availability of records.

AUTHORITY: 5 U.S.C. 552b(g).

SOURCE: 50 FR 2571, Jan. 17, 1985, unless otherwise noted.

§ 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decision making processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

§ 560.2 Definitions.

For purposes of this part, the term—

"*Administrative Officer*" means the Administrative Officer of the Marine Mammal Commission.

"*Commission*" means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom is appointed by the President, by and with the advice and consent of the Senate.

"*Commissioner*" means an individual who is a member of the Marine Mammal Commission.

"*Executive Director*" means the Executive Director of the Marine Mammal Commission.

"*General Counsel*" means the General Counsel of the Marine Mammal Commission.

"*Meeting*" means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner's consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether to:

(1) Hold a meeting with less than 7 days notice, as provided in § 560.4(d) of this part;

(2) Change the subject matter of a publicly announced meeting or the determination of the Commission to open or close a meeting or portions thereof to public observation, as provided in § 560.4(e) of this part;

(3) Change the time or place of an announced meeting, as provided in § 560.4(f) of this part;

(4) Close a meeting or portions of a meeting, as provided in § 560.5 of this part; or

(5) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 560.5 of this part.

"*Public observation*" means attendance by one or more members of the public at a meeting of the Commission, but does not include participation in the meeting.

"*Public participation*" means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

§ 560.3 Open meetings.

(a) Except as otherwise provided in this part, every portion of every meeting of the Commission shall be open to public observation.

(b) Meetings of the Commission, or portions thereof, shall be open to public participation only when an announcement to that effect is issued under § 560.4(b)(4) of this part. Public participation shall be conducted in an orderly, nondisruptive manner and in accordance with such procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(c) When holding open meetings, the Commission shall make a diligent effort to provide ample space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting.

(d) Members of the public may record open meetings of the Commission by means of any mechanical or electronic device, unless the chairperson of the meeting determines that such recording would disrupt the orderly conduct of the meeting.

§ 560.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least 7 days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions thereof closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Submitting the announcement for publication in the FEDERAL REGISTER;

(2) Distributing the announcement to affected governmental entities;

(3) Mailing the announcement to persons and organizations known to have an interest in the subject matter of the meeting; and

(4) Other means that the Executive Director deems appropriate to inform interested parties.

(d) A meeting may be held with less than 7 days notice if a majority of the members of the Commission determine by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(e) The subject matter of an announced meeting, or the determination of the Commission to open or close a meeting or portions thereof to public observation, may be changed if a majority of the members of the Commission determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible. The Commission shall make a public announcement of the changes made and the vote of each member on each change at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(f) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

§ 560.5 Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions thereof may be withheld from the public, only if the Commission determines that such meeting or portions thereof, or the disclosure of such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to that Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve either accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose either investigatory records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to either a fair trial or an impartial ajudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source or sources,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission. This exception shall not apply in any instance where the Commission has already disclosed to the public the content or nature of the proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Commission, or the participation of the Commission in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting or portions thereof may be closed to public observation, the Commission shall determine, notwithstanding the exemptions set forth in paragraph (a) of this section, whether or not the public interest requires that the meeting or portions thereof be open. The Commission may open a meeting or portions thereof that could be closed under paragraph (a) of this section if the Commission finds it to be in the public interest to do so.

§ 560.6 Procedures for closing meetings.

(a) A meeting or portions thereof may be closed and information pertaining to such meeting or portions thereof may be withheld under §560.5 of this part only when a majority of the members of the Commission vote to take such action.

(b) A separate vote of the members of the Commission shall be taken with respect to each meeting or portion thereof proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed, so long as each meeting or portion thereof in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in §§ 560.5(a) (5), (6) or (7) of this part. Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion thereof.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemptive provision from § 560.5(a) of this part.

(e) Within one day of a vote taken pursuant to this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing together with a list of all persons expected to attend the meeting and their affiliation.

§ 560.7 Recordkeeping requirements.

(a) Except as otherwise provided in this section, the Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting, whether opened or closed.

(b) In the case of either a meeting or portions of a meeting closed to the public pursuant to § 560.5(a) (8) or (10) of this part, the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

§ 560.8 Public availability of records.

(a) The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information which may be withheld under § 560.5 of this part.

(b) The transcript, electronic recordings or minutes of a meeting shall be made available for public review as soon as practicable after each meeting at the Marine Mammal Commission, 1625 I Street NW., Washington, D.C. 20006.

(c) Copies of the transcript, a transcription of the electronic recording, or the minutes of a meeting shall be furnished at cost to any person upon written request. Written requests should be addressed to the Administrative Officer, Marine Mammal Commission, 1625 I Street NW., Washington, D.C. 20006.

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CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 601.1 Purpose.

The regulations in this part implement certain portions of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), which, among other things, establishes eight Regional Fishery Management Councils (Councils). The principal responsibilities of these councils are to provide the nucleus of a national fishery conservation and management program through the systematic development of fishery management plans and amendments to such plans, to submit periodic and other reports to the Secretary, to continually review and revise assessments as to optimum yield and the total allowable level of foreign fishing, and to conduct other necessary and appropriate activities with respect to the conservation and management of the fisheries within their geographical area of concern. The Councils act as independent bodies, whose actions must conform to the uniform standards established by Part 601. Part 601 describes matters pertaining to the establishment, organization, practices, and procedures of the Councils.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56591, Dec. 22, 1983]

§ 601.2 Definitions.

The terms used in these regulations shall have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

(a) *Administrative and technical support services.* The administrative, technical, legal, and scientific services needed by the Councils, authorized by the Secretary, and provided by the government to assist the Councils in the fulfillment of their various functions required by the Act.

(b) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(c) *Advisory group.* The Scientific and Statistical Committees or advisory panels established under the Act.

(d) *Associate Administrator.* The Associate Administrator for Marine Resources, National Oceanic and Atmospheric Administration.

(e) *Confidential.* Confidential means containing information, the unauthorized disclosure of which could be prejudicial or harmful. Depending on the context within which it is used, the word:

(1) Identifies information having an official security classification of Confidential or higher relating to the protection of national security, or (2) describes information/data that is identifiable with an individual, business, or some other entity and that is accepted from any person by the Secretary under a stipulation that limits disclosure.

(f) *Council.* Regional Fishery Management Council.

(g) *Director.* The Director of the National Marine Fisheries Service.

(h) *Federal budget cycle.* The 33-month process of formulating and executing the Federal budget.

(i) *Fishery management plan.* A document that contains a systematic description of a given fishery and that sets forth the objectives and strategies for the management of the fishery.

(j) *Highly migratory species.* The following, among others, are considered highly migratory species for the purposes of the Act:

TUNA

Albacore, *Thunnus alalunga;*
Bigeye tuna, *Thunnus obesus;*
Bluefin tuna, *Thunnus thynnus;*
Southern bluefin tuna, *Thunnus maccoyii;*
Yellowfin tuna, *Thunnus albacares;* and
Skipjack tuna, *Euthynnus pelamis.*

(k) *Regional Director.* The Regional representatives of the Director. There are five regional offices of the National Marine Fisheries Service whose Regional Directors serve on the various Councils as specified by the Act.

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977; 48 FR 56591, Dec. 22, 1983]

Subpart B—Geographical Boundaries

§ 601.11 General.

(a) *Fishery conservation zone.* The Act creates a zone contiguous to the territorial sea, which is called the fishery conservation zone. The outer boundary of the zone is 200 nautical miles from the baseline from which the territorial sea is measured and the inner boundary is a line coterminous with the seaward boundary of each of the coastal States. (See 43 U.S.C. 1301(b) and 1312 for definition of "seaward boundary".)

(b) *Scope.* (1) The boundaries described in § 601.12 delineate the geographical area of authority of adjacent Council within this fishery conservation zone.

(2) Within the geographical area of authority, each Council shall develop fishery management plans for each fishery involving the following categories of fishery resources:

(i) All fish within this zone, except "highly migratory species";

(ii) All anadromous species throughout their migratory range, except within a conservation zone recognized by the United States; and

(iii) Continental Shelf fishery resources.

(c) *Jurisdiction*—(1) *State.* Generally the Act does not diminish the fishery jurisdiction of any State within its own boundaries, nor does it extend State fishery jurisdiction beyond a State's seaward boundary.

(2) *Intercouncil.* In any case in which the range of stock or a fishery extends beyond the geographical area of authority of any one Council, as defined in § 601.12, the Secretary is authorized to designate the Council that shall prepare the fishery management plan for such a fishery, after consultation with the Councils concerned. When such a plan includes waters adjacent to the States represented on more than one Council, the Council thus designated should consult with the other affected Council(s). The Secretary may require that a plan be prepared jointly by the Councils concerned. In this case, any plan or amendment must, before being submitted to the Secretary, shall be approved by a majority of the voting members, present and voting, of each participating Council.

[42 FR 34452, July 5, 1977]

§ 601.12 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the intersection point of Connecticut, Rhode Island and New York at 41°18′16.249″ latitude and 71°54′28.477″ longitude and proceeds S 37°22′32.75″ E to the points of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Method of determination.* The boundary between the New England and Mid-Atlantic Councils continues the agreed state boundary between New York and Rhode Island (to which Congress granted consent on July 1, 1944, Pub. L. 78-399) seaward to the 200 mile boundary of the fishery conservation zone.

(b) *Mid-Atlantic and South Atlantic Fishery Management Councils*—(1) *Description.* The boundary commences at the seaward boundary between the States of Virginia and North Carolina, and proceeds due East to the point of intersection with the outward boundary of the fishery conservation zone as specified in Title I, section 101 and Title II, section 202(d) of the Act.

(2) *Methods of determinations.* The boundary between the Mid-Atlantic and South Atlantic Councils continues the agreed State boundary between

Virginia and North Carolina seaward to the 200-mile boundary of the fishery conservation zone and, when drawn, would be a line of constant latitude described as 36°33′00.8″N.

(c) *South Atlantic and Gulf of Mexico Fishery Management Councils*—(1) *Description.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and the eighty-third meridian west of Greenwich (83° W. longitude), proceeds northward along that meridian to 24°35′ N. latitude (near the Dry Tortugas Islands), thence eastward along that parallel of latitude, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

(2) *Method of determination.* The boundary between the Gulf of Mexico and South Atlantic Councils reflects the determination in *United States* v. *Florida*, 425 U.S. 791 (1976), regarding the line of demarcation between the Atlantic Ocean and the Gulf of Mexico.

[42 FR 36980, July 18, 1977, as amended at 49 FR 30203, July 27, 1984]

Subpart C—Uniform Standards for Organization, Practices and Procedures

§ 601.21 General.

(a) *Purpose.* Section 302(f)(6) of the Act requires each Council to determine its own organization, practices and procedures for carrying out its functions in accordance with such Uniform Standards as are prescribed by the Secretary. The regulations contained in this subpart provide the Uniform Standards in accordance with which the Councils shall operate.

(b) *Applicability of other laws*—(1) *National Environmental Policy Act of 1969 (42 U.S.C. 4321).* The National Environmental Policy Act (NEPA) sets forth the strategy of the Congress to achieve coordination of Federal activities and environmental considerations. NEPA's basic purpose is to insure that, in addition to technical and economic considerations, Federal officials weigh and give appropriate consideration to unquantified environmental values in policy formulation, decisionmaking and administrative actions. Section 102(2)(C) of NEPA requires preparation of a detailed environmental impact statement in the case of major Federal actions that significantly affect the quality of the human environment. Procedures for compliance with NEPA in the preparation and submission of fishery management plans and amendments to such plans are set forth in § 602.6 [Reserved].

(2) Provisions of two interrelated laws affect Council practices and procedures concerning public access to government records. These laws are—

(i) *The Freedom of Information Act (5 U.S.C. 552(b)).* The Freedom of Information Act (FOIA) provides for public access to records of the executive branch of the Federal Government, and to records generated at the request of the Federal Government. Nine groups of exceptions are provided that allow the withholding of information. Application of FOIA is covered more specifically in Part 603.

(ii) *The Privacy Act (5 U.S.C. 552 (a)).* This Act provides to individuals certain rights of access to records kept about them, and at the same time requires that the confidentiality and use of the information be strictly regulated, placing restrictions on the collection, retention, and use of personal information. Specific application of this Act is found in Part 603.

(3) *Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).* The principal objective of this Act is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. While the coastal zone does not extend beyond the territorial sea, activities taking place beyond the territorial sea may impact on the coastal zone and thus come within the influence of coastal zone planning. In the preparation of fishery management

plans, Councils should be particularly cognizant of the provisions of section 307(c) of this Act that require that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program. Thus, Councils will need to coordinate their planning actions with the appropriate State agencies involved in coastal zone program development.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56589, Dec. 22, 1983]

§ 601.22 Organization.

(a) *General.* This part addresses such questions as organization of the Council members, administrative staff and advisory panels.

(b) *Council members.* The Councils consist of voting and nonvoting members or their designees, as specified in the Act.

(1) *Terms.* Members appointed following initial constitution of the Councils serve for a term of three years. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11.

(2) *Designees.* (i) The Act authorizes the principal State officials, the NMFS Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. Only one designee per Council may be so specified by each of the above officials.

(ii) A designee may serve for all or part of a Council meeting in the absence of the individual he or she is replacing and has the same voting power as his or her designator.

(iii) If circumstances require, the Council member may change his or her designee. In such case, the Chairman of the Council must be notified and given in writing, in advance of the meeting at which the designee will represent the Council member, the name, address, and position of the individual designated. A designee may not name a designee for himself or herself.

(iv) Designees without appropriate security clearance may not attend meetings closed for security reasons, nor handle classified material. (See § 601.23(e)(3).)

(v) Reimbursement of actual expenses and compensation, as described in § 601.23(i), associated with travel to any meeting shall be limited to the member, or, in the case of the absence of the member, one designee. A designee who serves for part of a Council meeting may receive reimbursement of actual expenses and compensation associated with necessary travel and attendance at that part of a Council meeting wherein the member is absent.

(3) *Designation of regional directors.* The Regional Directors, NMFS shall, in accordance with the Act, serve as voting members on the Councils as follows:

Council	Regional Director
New England	Northeast region.
Mid-Atlantic	Do.
South Atlantic	Southeast region.
Caribbean	Do.
Gulf of Mexico	Do.
Pacific	Northwest region.
North Pacific	Alaska region.
Western Pacific	Southwest region.

(4) *Appointments.* (i) Inasmuch as each year approximately one-third of a Council's appointed membership will lapse, new members will be appointed by the Secretary or the Secretary's delegate from lists of nominees submitted by the Governors of each applicable constituent state by March 15 of each year. The Governors are responsible for determining that their nominees meet the qualification requirements of the Magnuson Act and for providing appropriate documentation for the Secretary or the Secretary's delegate to make a reasoned choice. If the Secretary or the Secretary's delegate determines that an individual is not qualified, the Secretary or the Secretary's delegate will notify the appropriate Governor of that determination. The Governor will then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question.

(ii) There are two categories of seats for which appointed voting members may be eligible: "obligatory" and "at-large." Each Council constituent State has one obligatory seat. When the term of an obligatory State member expires, the Governor of that State is required to submit at least three nominations from which the selection of a replacement will be made by the Secretary or the Secretary's delegate. When the term of an at-large State member expires, the Governor of each member State of a Council shall submit at least three nominations for each vacancy, and the selection will be made by the Secretary or the Secretary's delegate from among the collective nominations by the Governors of all member States. Any individual whose term is expiring may be renominated for consideration.

(iii) The number of individuals who must be nominated by a Governor shall be equal to at least three times the number of vacancies available, and each such nominee shall be considered as available for any such vacancy. However, in a case where the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

(iv) The procedures in § 601.22 (b)(4)(i) through (iii) also apply when a vacancy occurs prior to the normal expiration of a term of membership of a voting member appointed by the Secretary or the Secretary's delegate.

(v) If a Governor fails to submit a list of at-large nominees within the time allotted, then the new at-large member(s) may be appointed from the list of names submitted by the Governors of the other applicable constituent States.

(vi) The Secretary may remove for cause any Secretarially-appointed member of a Council if the Council concerned first recommends removal by an affirmative vote of not less than two-thirds of the Council members who are voting members. The recommendation must be in writing and include a statement of the reasons upon which the recommendation is based.

(5) *Council organization.* The Chairman shall be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chairman may not exceed one year; however, the Chairman is eligible for re-election. The Council may establish other officers as deemed necessary and set their terms of office. The Council may appoint standing and ad hoc committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business. Such committees shall conform to the procedures for assuring open meetings specified for the Council.

(c) *Administrative staff.* Each Council shall appoint an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions, and which are consistent with budgetary limitations. However, the number of such employees may not exceed seven except as approved by the Director, NMFS. The Executive Director and staff are responsible to the Chairman of the Council.

(1) *Executive director*—(i) *Duties.* Each Council, through its Chairman, shall assign such duties to the Executive Director as it deems appropriate, consistent with these uniform standards.

(ii) *Compensation.* The administrative responsibilities, coupled with the complexity of the workload of the Council, will influence the pay level appropriate to a given Executive Director position, provided that compensation shall not exceed the yearly rate for the highest step of a GS-15 in the General Schedule.

(2) *Other administrative staff*—(i) *Minimum.* As a minimum, each Council shall have an administrative staff consisting of an executive director, an administrative officer, and a secretary.

(ii) *Additional staff.* Additional administrative staff above the minimum prescribed above will vary by Council because of differences in workload and availability of resources. The number and types of additional positions will also vary over time as the work of the Council is defined during its initial phase of operation.

(d) *Scientific and statistical committee.* Each Council shall establish and maintain, and appoint the members of, a Scientific and Statistical Committee to assist it in the development, collection and evaluation of such statistical, biological, economic, social and other scientific information as is relevant to such Council's development or amendment of any fishery management plan. The Council is authorized to pay the actual expenses of such Committee members while engaged in Council business.

(1) *Committee function.* The Scientific and Statistical Committee provides expert scientific and technical advice to the Regional Council on the development of fishery management policy, on the preparation of fishery management plans, and on the effectiveness of such plans once in operation. The Committee aids the Council in identifyfing scientific resources available for the development of plans, in establishing the objectives of plans, in establishing criteria for judging plan effectiveness and in the review of plans.

(2) *Committee organization.* The members of the Committee and a Chairman are appointed by the Council. Membership shall be multidisciplinary, including both biological and social scientists from the Federal, State, and private scientific community who are knowledgeable about the fisheries to be managed. The size of the Committee is discretionary within the resources budgeted to the particular Council. The Committee shall meet in the area encompassed by the Council's constituent States, with the approval of the Chairman of the Council. No staff is assigned to this Committee but staff support may be requested from the Chairman of the Council or the Executive Director.

(e) *Fishery advisory panels.* Each Council is authorized to establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Act. The Councils are authorized to pay the actual expenses of the members of such panels while engaged in the performance of Council business.

(1) *Panel function.* Fishery Advisory Panels are authorized principally to obtain the pragmatic advice and counsel of the people most affected by, or interested in, Council matters of fishery management policy; on the preparation of fishery management plans; on their review prior to submission to the Secretary; and on their effectiveness once in operation. These Panels aid the Council in establishing both the goals and objectives of plans as well as the criteria for judging plan effectiveness, and serve as a communication link with those who must operate under the management regime.

(2) *Panel organization.* The members and a Chairman are appointed by the Council. The membership of each Panel shall be composed of a balanced representation of the interests of those who are either actually engaged in the harvest, processing or consumption of, or are knowledgeable and interested in the conservation and management of, the applicable fishery or stock(s) of fish. The size of each Panel is discretionary within the resources available to the particular Council, but each panel must be of sufficient size and number to permit a balanced representation of interests. It is suggested for the purpose of minimizing administrative requirements that each Council establish one broad-based advisory panel. Subpanels may be used to provide advice on individual fisheries on unique fishery resources under Council consideration. The Panels shall meet in the area encompassed by the Council's constituent States as deemed necessary by the Council Chairman. No staff is assigned to these Panels, but staff support may be requested from the Chairman of the Council or the Executive Director.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56590, Dec. 22, 1983]

§ 601.23 Administrative practices and procedures.

(a) *General.* The Act directs the Secretary to provide the Councils with administrative support services as are necessary for their effective functioning. The Administrator of the General Services Administration is directed by the Act to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States. All Federal agencies are authorized to detail personnel on a reimbursable basis to the Councils after consulting with the Director, NMFS. (See paragraphs (d)(3) and (e)(2) of this section.) Uniform Standards in this section are provided in order to expedite the delivery of this support with a minimum burden on the substantive work of the Councils.

(b) *NOAA field units.* NOAA field units are assigned to provide services and support to each Council as follows:

Council	Servicing field unit
New England	Northeast region, NMFS.
Mid-Atlantic	Do
South Atlantic	Southeast region, NMFS
Caribbean	Do.
Gulf of Mexico	Do.
Pacific	Northwest region, NMFS.
North Pacific	Alaska region, NMFS.
Western Pacific	Southwest region, NMFS.

These NOAA field units are authorized to provide for budgetary, accounting, personnel, and procurement support to their respective Councils, and may act as liaison between the Councils and other Federal agencies.

(c) *Budgeting, funding, and accounting*—(1) *Federal funds.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through that agency, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual grants will provide such federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations.

(2) *Funds from other sources.* [Reserved]

(3) *Financial procedures and standards.* The Councils shall be governed by the requirements of Office of Management and Budget Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" (41 FR 32016) as published July 30, 1976, and the following standards:

(i) *Procurement.* The Councils shall establish their own procurement policies and procedures, which shall be included in the Statement of Organization, Practices, and Procedures (see § 601.25). However, all Councils shall adhere to the requirements set forth in OMB Circular A-110, Attachment 0, paragraphs 3 and 4.

(ii) *Financial management system.* The fiscal year will coincide with the Federal Government's fiscal year. A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council shall be prepared monthly for the Council membership. Each cash disbursement shall be approved by an individual(s) designated by the Council Chairman. The approval authority shall be included in any Statement of Organization, Practices, and Procedures published after the effective date of this regulation. A uniform classification of accounts shall be used by all Councils in maintaining accounting records in accordance with the Model Accounting System issued by NMFS on November 26, 1976 and provided to the Councils. When budget estimates are submitted to the Director, the uniform account classification titles shall be used.

(iii) *Advance of funds and letters of credit.* Grant funds in an amount less than $250,000 will be disbursed from the Department of the Treasury upon receipt in NOAA of a properly executed Advance of Funds request (Form SF-220). OMB Circular A-110 limits the amounts of funds that can be disbursed and requires that transfer of funds from the Treasury be made as soon as possible to the time of disbursement by the grantee. A Letter of Credit will be established for grants in excess of $250,000. Drawdowns from the Treasury will be made through the commercial bank and a Federal Reserve Bank. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than $10,000. These requirements are under the Department of the Treasury Circular 1075, "Regulations Governing Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (38 FR 5242) as published February 27, 1973.

(iv) *Audit.* Independent audit is required not less than every two years. Annual audits may be performed at the Council's discretion. All Councils are subject to audit by the Secretary of Commerce and the Comptroller General of the United States. The scope of audit may include: Conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(v) *Financial reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF-272) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF-269) is required from each Council quarterly and should be submitted to the NOAA Grants Officer no later than 15 working days after the end of the quarter. A final report is required upon completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is in Attachment G of OMB Circular A-110.

(d) *Employment practices.* The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel related standards to be used by the Secretary in analyzing Council budgets.

(1) *Staffing.* Each Council may appoint and assign duties to an Executive Director and such other full and part time administrative employees as the Secretary determines are necessary to the performance of its functions. Each position must be justified during the budget process described in OMB Circular A-110. Descriptions of the work to be performed shall be submitted in accordance with § 601.23(d)(6) dealing with salary and wage administration.

(2) *Experts and consultants.* Each Council may contract with experts and consultants as needed and within their respective budgets to provide technical assistance. Such experts and consultants may not provide services on a permanent basis (see § 601.231(e)(2)).

(3) *Details of Government employees.* Each Council may request the head of any Federal agency to detail to such Council on a reimbursable basis any personnel of such agency to assist the Council in the performance of its functions under the Act (see § 601.23(e)(2)). The length of such details shall be mutually determined by the Council, the Federal employee and his or her agency. Federal employees so detailed retain all benefits, rights and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments.

(4) *Nondiscrimination.* All activities of the Council must operate under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(5) *Personnel actions.* Subject to these instructions, and within budgetary constraints, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Involuntary separation should be for cause alone, with reasonable notice given to the employee.

(6) *Salary and wage administration.* (i) In setting rates of pay for Council staff, the principle of equal pay for equal work shall be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(ii) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, and Puerto Rico. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(iii) The duties of any new position shall be contained in a brief description to be submitted to the NOAA personnel office servicing the NMFS Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range, except that, unless the recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time. After a position has been filled, an employee may be promoted annually and recognized for superior performance in accordance with Council policies.

(7) *Leave.* Employees of the Council should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (jury, military reserve obligations) as determined by the Council. Paid annual leave should not exceed 20 days per year, and sick leave should not exceed 13 days per year. Earned annual and sick leave may be accumulated from year to year.

(8) *Employee benefits.* The Council should provide its employees the opportunity to participate in group medical insurance, life insurance and retirement plans and pay a reasonable proportion of the cost of such plans.

(9) *Conduct.* The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. Such standards should include the following principles:

(i) No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(ii) No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(iii) No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(iv) No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her council duties.

(v) No Council member, employee of the Council or member of a Council advisory group shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(vi) No Council member or employee of the Council shall engage in criminal infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

(vii) No Council member or employee of the Council shall use Council property on other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(10) *Personnel files.* A file for each council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the Privacy Act. This file will be available to the member, and to other persons only when a need to know has been established. Each Council should maintain in its office, personnel files

on their employees and experts and consultants under contract under appropriate safeguards in accordance with the Privacy Act.

(11) *Security investigations.* When it is anticipated that security classified information will be kept or handled in council offices, certain employees shall be designated to be permitted access to the information in accordance with Federal standards and shall receive appropriate security clearance from the Office of Investigation and Security of the Department of Commerce.

(e) *Personnel*—(1) *Council staff.* The Councils may, consistent with the standards of employment practice standards contained in § 601.23(d), establish positions and recruit, hire, compensate, and dismiss personnel. The personnel procedures of each Council will be subject to audit periodically.

(2) *Ad Hoc staff support.* All Federal agencies are authorized by section 302 (f)(2) of the Act to detail personnel to the Council on a reimbursable basis. Any Council requests to the heads of such agencies must contain the purpose of the detail, the length of time of the detail, the compensation to be paid, and the stipulation that the Director, NMFS, be consulted prior to granting the request. Copies of this correspondence shall be transmitted to the Director, NMFS, through the appropriate NOAA Field Office to facilitate such consultation. Legal Counsel on a continuing basis is available from the regional office of the NOAA Office of General Counsel. Councils are expected to obtain legal counsel from NOAA before seeking other legal counsel. Other experts and consultants including legal counsel, may be used as the Council considers appropriate, consistent with budgetary limitations (see § 601.23(d)(2)).

(3) *Council access to security classified material.* The security investigation that is routinely conducted at the time a nominee to the Council is appointed is the basis for authorizing access on a need-to-know basis to material classified Confidential. Normally this should be sufficient for Council purposes (see also § 601.22(b)(2)(iv)). Clearance for higher classifications may be granted, following regular Federal procedures, by the Secretary. Access to security classified material is governed by security regulations and procedures pursuant to Executive Order 11652, effective June 1, 1972. Need-to-know is determined by the authority having custody of the material. Persons who are not members of the Council, including Council staff, and members of advisory groups, must possess the appropriate security clearance before they may be present when classified materials are discussed or examined. Such clearances will be requested through the appropriate NOAA field unit.

(4) *Council procedures to protect confidentiality of statistics.* Each Council will establish appropriate procedures applicable to it and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics.

(f) *Compensation and expense*—(1) *Compensation.* The voting members of each council who are not employed by the Federal Government or any State or local government shall receive compensation at the daily rate for a GS-18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council.

(2) *Expenses.* Council voting members, the nonvoting Executive Director of the Marine Fisheries Commission for the geographical area concerned, (if any), the additional nonvoting member of the Pacific Council, and the members of the advisory panels shall be reimbursed for actual expenses associated with travel on official Council business. The Council may also pay the transportation and expenses, on an actual expense per diem basis, of invited experts and consultants, and Council staff. All such expenses must be authorized by the

Chairman of the Council or the Executive Director and be supported by detailed vouchers attested to by the person incurring the expenses. Individual receipts, except for hotel receipts, are not required. Foreign travel must have the prior consent of the Administrator.

(3) *Actual expense defined.* Actual expenses include transportation by air coach, rail coach, bus or privately-owned vehicle (automobile or private plane—reimbursed on a per mile basis); room and meals within a reasonable limit to be established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking and telephone calls on official business.

(g) *Reporting.* The Councils may submit such periodic reports as the Council deems appropriate and any other relevant report which may be requested by the Secretary. Requirements for periodic financial or other reports for purposes of NOAA budgetary control and reporting are described in individual grants issued to the Councils and in § 601.23(c)(3).

[42 FR 34452, July 5, 1977, as amended at 42 FR 36980, July 18, 1977; 48 FR 56590, Dec. 22, 1983]

§ 601.24 Operational practices and procedures.

(a) *General.* In fulfilling the Council's responsibilities and functions, the Council members will meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information or make decisions regarding material before them. This section establishes uniform standards for the conduct of those activities to meet the requirements of the Magnuson Act and to facilitate the exercise of Council responsibilities. This section applies to any formally constituted work group or team which meets at the direction of the Council.

(b) *Meetings*—(1) *General.* The Councils will meet at the call of the Chairman or upon request of a majority of the voting members. Advisory groups will meet the approval of the Chairman of the Council. Emergency meetings will be held at the call of the Chairman or equivalent presiding officer. The Councils will develop a mechanism for coordinating requests for advice from their advisory groups through the Executive Director.

(2) *Notice.* Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, will be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting will also be published in the FEDERAL REGISTER.

(3) *Record.* Minutes of each meeting will be kept and will contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

(4) *Conduct.* (i) Meetings will be conducted in a manner to permit the greatest possible participation by all members of the Council and the public. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at meetings. Decisions by consensus are permitted except where the issue is Council approval or amendment of a fishery management plan (including any proposed regulations), or comments for the Secretary on foreign fishing applications or fishery management plans developed by the Secretary. In these cases, a vote is required.

(ii) A majority of the voting members of any Council shall constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) When there is a vote, the majority of the voting members present and voting will rule. Voting by proxy is not permitted. Where unanimity is required, the unanimous vote of a quorum of the voting members of the Council will suffice.

(iv) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary may submit a statement of their reasons for dissent to the Secretary.

(v)(A) Unless closed in accordance with paragraph (b)(4)(vi) of this section, each regular meeting and each emergency meeting will be open to the public.

(B) Subject to the precedures established by the Council under § 601.23(e)(4), and the guidelines prescribed by the Secretary under Part 603 relating to confidentiality, the administrative record (including minutes required under paragraph (b)(3) of this section) of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, will be available for public inspection and copying at a single location in the offices of the Council.

(vi) Each Council, scientific and statistical committee, and advisory panel:

(A) Will close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(B) May close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, advisory panel and statistical committee appointments, contractor selection, or briefings on litigation in which the Council is interested.

(vii) If any meeting or poriton is closed, the Council, committee, or panel concerned will publish notice of the closure in local newspapers in the major fising ports within its region (and in other major, affected fising ports), including the time and place of the meeting.

(5) *Frequency and duration.* The Councils shall meet in plenary session at least once every three months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chairman.

(6) *Location.* (i) Each Council shall conduct all meetings within its geographic area of concern. In the particular case of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare a fishery management plan jointly, Councils so designated may meet jointly within their constituent States for the purpose of developing or amending such a plan.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be easily accessible to those interested in attending.

(c) *Hearings*—(1) *General.* The Magnuson Act directs the Councils to hold public hearings, at appropriate times and in appropriate locations in the geographical area concerned, in order to provide the opportunity for all interested persons to be heard in the development of fishery management plans, amendments thereto, and with respect to the administration and implementation of the Magnuson Act. The Council may use its judgment regarding when and where such hearings should be held, keeping in mind that the term "geographical area of concern", for purposes of holding hearings, may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area.

(2) *Conduct.* When it is determined that a hearing is appropriate, the Chairman of the Council will designate at least one voting member of the Council to officiate. Conduct of the hearing, beyond the stipulation that all points of view be given a chance for expression, is within the discretion of the hearing official under whatever instructions the Council may wish to provide.

(3) *Notice.* Hearings shall follow the same procedures for announcement as for Council and advisory group meetings. Advance notice also should be given in the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(4) *Record.* An accurate record of the participants and their views shall be reported back to the Council and maintained as a part of the Council's official records.

(d) *Council operational structure*—(1) *General.* In addition to the Council staff and the advisory groups that are provided for in the Act, an operational structure will be needed to develop basic inputs to the Fishery Management Plans and to assemble drafts for formal review by the Councils and their advisors. The operation structure(s) selected by a Council should:

(i) Address directly the responsibilities and functions listed in section 302(h) of the Act; and

(ii) Strike a reasonable balance among the following criteria.

(2) *Criteria for formation*—(i) *Focused responsibility.* The structure selected should assign clearly defined responsibilities in a clearly defined chain of command consistent with the formal structure provided in the Act.

(ii) *Administrative simplicity.* The structure selected should permit thorough and uncomplicated supervision by those with formal responsibility, including the Executive Director of the Council.

(iii) *Flexibility.* Within defined responsibilities, the structure should be able to bring to bear the necessary expertise on planning problems and to respond to shifts in Council priorities.

(iv) *Independence and relevance of science.* The scientific input to the development of plans should to the extent possible, be institutionally insulated from managerial biases and pressure from interested parties while remaining relevant to the problems of management.

(v) *Quality of scientific and technical information.* The structure should assure that the best scientific and technical information available will be applied in plan development.

(vi) *Minimum cost.* Cost, both in dollars and in diversionary impact on ongoing programs should be minimized within the constraints of the other criteria.

[42 FR 34452, July 5, 1977, as amended at 48 FR 56590, Dec. 22, 1983]

§ 601.25 Council statement of organization, practices and procedures.

(a) *General.* (1) The Act requires that the details of how a Council operates shall be published by the Council and made available to the public. The required Statement of Organization, Practices and Procedures, as a minimum, shall address the items listed in the format below.

(2) Publication will be in the FEDERAL REGISTER, and include an address where interested members of the public may write to request copies. Changes in operating practices and procedures shall be reflected in revisions to the statement, which shall likewise be published and made available to the public.

(b) *Format.* (1) Name of council.

(2) Location of offices.

(3) Legal authority.

(4) Purpose.

(5) Council composition.

(6) Officers and terms of office.

(7) Staff.

(i) Composition.

(ii) Functions.

(iii) Employment practices.

(8) Standing committees of council members.

(i) Name.

(ii) Composition.

(iii) Function.

(9) Meetings and hearings.

(i) Frequency.

(ii) Duration.

(iii) Location.

(iv) Agendas or orders of business.

(v) Minutes.

(vi) General rules of procedures.

(vii) Authority of the chair.

(10) Advisory panels.

(i) Name.

(ii) Composition.

(iii) Function.

(11) Organization of management plan development teams.

(i) Organization.

(ii) Practices and procedures.

(iii) Balance among criteria.

(A) Focused responsibility.

(B) Administrative simplicity.

(C) Flexibility.

(D) Independence and relevance of science.

(E) Quality of scientific and technical information.

(F) Minimum cost.

(12) Financial management system.

(i) Standards for and code of employment conduct in contract awards and administration.

(ii) Procurement procedures.

(iii) Property management.

(iv) Accounting and budgetary control procedures.

[42 FR 34452, July 5, 1977]

PART 602—GUIDELINES FOR FISHERY MANAGEMENT PLANS

Subpart A—General

Sec.
602.1 Purpose and scope.
602.2 Style guide.

Subpart B—National Standards

602.10 General.
602.11 National Standard 1—Optimum Yield.
602.12 National Standard 2—Scientific information.
602.13 National Standard 3—Management Units.
602.14 National Standard 4—Allocations.
602.15 National Standard 5—Efficiency.
602.16 National Standard 6—Variations and Contingencies.
602.17 National Standard 7—Costs and Benefits.
APPENDIX A TO SUBPART B—EXPLANATORY MATERIAL

AUTHORITY: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 602.1 Purpose and scope.

The Act requires that any fishery management plan or amendment prepared by either the Regional Fishery Management Councils or the Secretary of Commerce, and any regulations issued to implement a fishery management plan or amendment, shall be consistent with seven national standards, the other provisions of the Act, and any other applicable law. Part 602 implements those portions of the Act that pertain to the development, content, submission, amendment, review, and implementation of fishery management plans, and establishes guidelines to assist in achieving the required consistency.

[48 FR 7408, Feb. 18, 1983]

§ 602.2 Style guide.

(a) *Definitions.* The terms used in these guidelines have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

The Act—the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), also known as the FCMA, or the Magnuson Act.

Council—Regional Fishery Management Council, as established by the Act.

Secretary—Secretary of Commerce.

(b) *Abbreviations.*

ABC—acceptable biological catch.
DAH—estimated domestic annual harvest.
DAP—estimated domestic annual processing.
EY—equilibrium yield.
FCZ—fishery conservation zone.
FMP—fishery management plan.
JVP—joint venture processing.
MSY—maximum sustainable yield.
OY—optimum yield.
PMP—preliminary fishery management plan.
TAC—total allowable catch.
TALFF—total allowable level of foreign fishing.

(c) *Word usage.* (1) *Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law.

(2) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

(3) *May* is used in a permissive sense.

(4) *May not* is proscriptive; it has the same force as *must not.*

(5) *Will* is used descriptively.

(6) *Shall* is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean "is able to," as distinguished from "may."

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis*, as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

(14) *Industry* includes recreational and commercial fishing and the harvesting, processing, and marketing sectors.

[48 FR 7408, Feb. 18, 1983]

Subpart B—National Standards

SOURCE: 48 FR 7408, Feb. 18, 1983, unless otherwise noted.

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e., the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (c)(4) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *MSY.* (1) MSY, a theoretical concept, is the largest average annual catch or yield that can be taken over a period of time from each stock under prevailing ecological and environmental conditions. It may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually.

(2) In an unexploited stock of fish, the natural mortality rate is balanced by growth and recruitment rates on average. Once fishing pressure is applied, the balance of mortality, growth, and recruitment is altered, and the average value of these rates and the average population size changes. As the population size changes, a new balance of rates is achieved. The interrelationship between these rates and population size provides the basis for specifying the MSY of a stock. Techniques for estimating MSY depend on the scientific information available. The MSY may be derived from average past catches, stock production models, yield per recruit or dynamic pool models, spawner/recruit relationships, total biomass estimates and estimates of natural mortality, biomass estimates from ecosystem models, or other valid methods.

(3) The determination of OY requires a specification of MSY. However, where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based not on a fabricated MSY but on the best scientific information available.

(4) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. Examples are ABC, TAC, and EY. Such adjustments are valid, provided that they are explained and justified.

(d) *Overfishing.* (1) Overfishing is a level of fishing mortality that jeopardizes the capacity of a stock(s) to recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions. An FMP must prevent overfishing, except in certain limited situations. For example, harvesting the major component of a mixed fishery at its optimum level may result in the overharvest of a minor (smaller or less valuable) stock component. In another case, solving a particular problem may necessitate pruning larger fish from the population. A Council may decide to permit this type of overharvest if the analysis (paragraph (e)(5) of this section) identifies the benefits from such overfishing, and if the Council's action will not cause any stock component to require protection under the Endangered Species Act.

(2) Significant downward trends in spawning stock sizes and in average annual recruitment over a period of several years may signal that overfishing is occurring. These downward trends usually are preceded or accompanied by increased variability in annual recruitment and by major shifts to younger fish and fewer year classes in the spawning stock. If fishing continues at a rate that perpetuates the downward trends, the spawning stock eventually may be incapable of significant reproduction and may be irreversibly damaged.

(3) Declines in stock size may occur independent of fishing pressure, caused by a combination of factors such as natural fluctuations in the stock itself and in the environment, and man-made changes in essential habitat. Significant adverse alterations in the environment increase the possibility that fishing effort will contribute to a stock collapse. Decisions about the allowable level of fishing mortality will vary according to the conditions of the fishery and the amount of risk associated with different harvest rates.

(4) Since changes in environment/habitat conditions can produce the appearance of overfishing (as can new fishing pressure on an underutilized stock), care should be taken to identi-

fy the cause of the downward trends. Whether the trends in spawning stock size and in average recuitment are caused by environmental changes or by fishing effort, the only direct control under the Act is to propose management measures to reduce fishing mortality. Unless the Council asserts that reduced fishing pressure would not alleviate the problem, the FMP must include measures to reduce fishing mortality. If environmental changes are the primary cause of the downward trends, Councils may recommend restoration of habitat and other ameliorative programs.

(5) Fishing can produce a variety of effects on local and stockwide abundance, availability, size, and composition. Some of these effects have been called "overfishing"—with or without qualifiers such as growth, localized, and pulse. These effects are not "overfishing" under standard 1; a Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP.

(e) *Specification of OY.* (1) *OY and management objectives.* Ideally, the process of determining OY and the resulting specification integrate the various objectives of the FMP. Relative weighting of the elements of the OY determination will be influenced both by regional objectives and by national considerations. Rarely will a fishery be managed to meet a single objective. Objectives may conflict. Consequently, priority decisions should be made in developing objectives, the timing of their achievement, and the management measures to achieve them. (See section 602.10.)

(2) *Values in determining OY.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(A) of the Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to consumers at reasonable prices, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(B)). Examples are given below. Not every factor will be relevant in every fishery; for instance, there may be no Indian treaty rights. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Some other factors that may be considered are the value of industrial fisheries the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Form of OY specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards.

(iv) The OY specification can be converted into an annual numerical estimate to establish the TALFF and to analyze impacts of the management regime. There should be a mechanism in a multiyear plan for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (d)(1) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species reaching a "threatened" or "endangered" status. If the stock has been diminished below a desired level, the analysis should include a program for rebuilding the stock. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate and weigh them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(f) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve it. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary then has the obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(g) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The achievement of OY under national standard 1 requires that foreign fishing vessels be given reasonable opportunity to harvest such "surplus." The exception is where an annual fishing level is certified under section 201(d)(2)(B). The annual fishing level amount is allocated to foreign fishing, as is the remainder of the "surplus" (OY minus DAH); if the determinations under section 201(d)(4) are made, however, allocation of all or part of that remainder may be deferred until the next harvesting season.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *Reserves.* Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to foreign fishermen, if necessary, so that full utilization of the OY may be achieved. An FMP may also provide for a direct transfer of a portion of DAH to TALFF.

(3) *DAP.* (i) Each FMP must identify the capacity of U.S. processors. It must also identify the amount of domestic annual processed fish (DAP), which is the sum of two estimates:

(A) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(B) The amount of fish that will be harvested but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(ii) When DAH exceeds DAP, the surplus is available for JVP. JVP is a part of DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in the FCZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stock(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stock(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the FCZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exists or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within State waters to achieve FMP objectives, the FMP should identify what State action is necessary, discuss the consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. Interna-

tional boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the FCZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3) (i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3) (i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management measures" under section 303 of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act and in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely responses to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be a reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effects of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description enables the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an

FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances inthe fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management*—(1) *General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, State, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resource and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers.

Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

APPENDIX A TO SUBPART B—EXPLANATORY MATERIAL

OVERVIEW

The guidelines allow for innovative policy evolution in response to new social or economic circumstances, and set out the benchmarks of current fishery management policy under the Act. With responsible management of a valued national resource as the goal, NOAA believes the guidelines should supply the Councils, as fishery management planners, a means to assess their work in developing and documenting their decisions. To that end, certain sections of the guidelines specifically address requirements and options for contents of an FMP, supplementing and drawing into sharper focus provisions of § 602.3 (Contents of Fishery Management Plans), currently in effect. These sections are usually indicated by the paragraph heading "analysis," within which is given more detailed guidance as to the kind of discussion and examination that an FMP should contain to demonstrate consistency with the standard in question. Words within these sections were carefully chosen to convey levels of effort and information commensurate with need (e.g., "consider," "take into account," "explain," "discuss," "examine," "analyze," "identify").

Fishery management decisions affect the fishing industry, the government and the individual taxpayer/consumer. Members of industry, citizens, and those responsible for implementing a fishery management regime need to know the reasons for decisions that affect them. Thus, it is important that certain issues (particularly those that are controversial) undergo enough examination and discussion to illuminate the options, demonstrate the rationales, and justify the final choice of management regime. This implicit democratic principle of accountability in government underlies and reinforces the Secretary's statutory responsibility to make informed judgments regarding an FMP's consistency with the national standards. The principle is reflected in the philosophies of the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (FRA), the Paperwork Reduction Act (PRA) and Executive Order (E.O.) 12291—all of which seek accountability in regulatory action.

Section 602.2 contains a style guide, which explains the use of specific words to distinguish the advisory, explanatory, or obligatory nature of the guideline language, and presents other words within the precise context of the guidelines.

Section 602.10 makes it clear that FMPs in substantial compliance with the guidelines, the Act, and other applicable law must be approved. The guidelines are meant as a protection for everyone in the FMP system. Their acceptance and use are a matter of practical utility for the Councils and of public commitment of the agency to consistent application of the policies stated. As an aggregation of policies developed through creative Council responses to regional fishery management problems, they are a way of sharing the empirical knowledge gained over the life of the Act.

STANDARD 1

Maximum Sustainable Yield (MSY)

Past controversy concerning MSY has related to its adequacy as a goal to be achieved by management. As used in the Act, MSY is a baseline tool in the determination of OY. In recognizing that MSY represents the underlying biological rationale upon which most determinations of OY rest, the guidelines set forth a more flexible framework for its calculation. Recognition of the need for flexibility in approaching MSY and OY has come as a result of plan review experience and Council innovation in adapting these concepts to the characteristics of different fisheries.

It is clear that because the Act requires the MSY specification, every attempt should be made to specify it. The guidelines acknowledge that MSY may be derived from a number of formulas or models (depending on the level and type of information available), that the use of range for MSY is satisfactory, and that in some fisheries a numerical MSY is not essential in establishing an appropriate underlying biological basis for OY. NOAA believes that Congressional intent is served if OY rests, even in these cases, on the best directly relevant biological information available.

The guidelines permit adjustment of (deviation from) MSY prior to determining OY under certain conditions, provided that the adjustment is fully justified in terms of environmental, ecological, or biological data available for the management unit under consideration. One type of adjustment is illustrated by the concept of Acceptable Biological Catch (ABC), used by some Councils. Following from the guideline definition of MSY as a long-term average, ABC is an annually determined catch that may differ from MSY for biological reasons—lower or higher to allow for fluctuating recruitment. It may be set lower than MSY to rebuild overfished stocks, or to be conservative when there is inadequate data on the status of the stocks.

Other types of adjustment to MSY have been made to allow for the influence of environmental factors. For example, the Gulf of Mexico shrimp MSY is adjusted annually through the use of an environmental calculation involving water flow and temperature characteristics. This fishery also illustrates that the biological resiliency and high fecundity of some stocks may allow OY to become a descriptive statement, equivalent—for all practical purposes—to MSY: OY in the Gulf shrimp FMP is equal to all the shrimp harvested under the FMP's management measures. Another instance where stock characteristics influence the determination of OY directly (making a numerical calculation of MSY immaterial) is the stone crab FMP, in which OY is all the stone crab caught with a minimum claw size. (Descriptive OYs can be converted into an annual numerical estimation for purposes of deriving TALFF, and for other reasons.) In cases where specification of MSY may not be technically possible because of lack of assessment data—such as might occur in an unutilized resource for which a fishery suddenly develops or in species that are minor components of mixed species fisheries—the OY still must be derived from biological information, as for example, the proportional abundance of associated species.

Overfishing

Overfishing is a relative term; it cannot be defined in isolation from its biological, economic, or ecological consequences, nor from its relationship to given management objectives. The prevention of overfishing has as its goal the protection of a stock's general reproductive capacity and its productivity in terms of maintaining an adequate supply of catchable fish.

The guidelines state that significant downward trends in spawing stock size and in average annual recruitment to the fishery may signal that overfishing is occurring. Recruitment is the process of adding new fish to the catchable population by the growth of smaller fish, or movement of fish into a fishing area from an unfished area. For an individual fish, recruitment occurs when the fish becomes large enough to be, in some degree, vulnerable to capture by the fishing gear used in the fishery. Thus, one refers to "recruitment to the fishery" to indicate the process of becoming catchable or becoming a recruit.

Ascertaining when these downward trends in stock size and recruitment have been established is a judgment based on information gained over time from scientific stock assessment, from harvesters and processors (through logbooks, catch samples, interviews, weigh-out slips, etc.), and from other sources such as aerial surveys or hydroacoustic data. NOAA also recognizes that a decline in stock size or abundance may occur independent of fishing pressure and that adverse changes in essential habitat may increase the risk that fishing effort will contribute to a stock collapse.

The guidelines specify that an FMP should explain how its conservation and management measures will prevent overfishing, including a program for rebuilding the stock if it has been diminished below a desired level. They also indicate that even if fishing pressure were not the cause of the problem, the Act limits the authority of the Councils in addressing the other causes. The only direct control available under the Act, under any circumstances, is to reduce fishing mortality. These controls might include, for example, establishment of catch quotas, closed seasons, closed areas, limits on mesh size, limited vessel days, and limits on vessels entering the fishery.

Fishing can produce a variety of effects on local and areawide abundance, availability, size, and composition of a stock. Some of these effects have been called "overfishing"; however, the guidelines state that these effects are not "overfishing" under standard 1, and that a Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP. These "permissible" types of overfishing have been called "growth," "localized," and "pulse" overfishing.

Growth overfishing occurs when fishing pressure or some other factor results in the taking of too many fish before they have reached their optimum size for harvest. It may be the result of a planned attempt to harvest preferentially because of a demand for a smaller product, a high discard rate of a non-target species, faulty fishing practices, or heavy fishing pressure. Growth overfishing may be discouraged or disallowed by regulating mesh sizes or imposing area closures, to force fishing on larger or more marketable fish, as in the cases of butterfish, surf clams, or Gulf of Mexico shrimp.

Localized overfishing occurs when small portions of a fishery are temporarily overfished at a particular point in space and time. It can occur in reef fish fisheries when fishing pressure causes a temporary denuding of a particular reef. However, the chief characteristic of this type of overfishing is its temporary nature (i.e., the remainder of the stock of fish can repopulate the overfished portion).

Pulse overfishing can be tolerated under certain conditions. For example, it may be desirable for economic and social reasons in a specific fishery to allow the taking of a given amount of fish in a short time, and then let the stock rest for a period. Extra care should be taken so that pulse fishing does not result in serious long-term depletion.

As management regimes become more comprehensive, the interrelationships of fishing pressures on target and nontarget (both major and minor) species will have to be addressed more directly. NOAA believes that rational management of any multi-species fishery includes acknowledging the fact that overharvesting minor subcomponents may be unavoidable. The guidelines allow such overharvesting if the benefits are analyzed, the individual populations within a management unit so affected are identified, and an assessment of the risk of the species reaching a "threatened" or "endangered" status is made so that Council action will not cause any stock component to require protection under the Endangered Species Act.

Whether to allow any type of overfishing will continue to be argued among economists, biologists, industry representatives, and environmentalists. The policy question centers on whether the primary responsibility under the Act is to the resource or to the users of the resource, on the "wise use"/preservation dichotomy inherent in the word "conservation," and on the tension between risk and predictability. NOAA believes that the overfishing sections of the guidelines are responsive to the findings of the Act, particularly when read in conjuction with the standard 6 guideline provisions for buffers, reserves, and framework plan flexibility.

Optimum Yield (OY)

NOAA believes it important to keep the distinction clear between the two separate parts of standard 1: To prevent overfishing, and to achieve OY. The guidelines are written such that overfishing is an intrinsic limitation on OY; it is built into the OY determination, yet maintains a separate identity as a prohibition. For example, exceeding OY does not constitute overfishing when the fishery is not depressed. On the other hand, exceeding OY may constitute overfishing when the margins of tolerance are low. (Buffers to protect against overfishing because of uncertainty in estimating stock size or domestic harvest may be established in the form of reserves or a reduced OY.)

Whether exceeding OY is overfishing is a separate issue from continual harvest at a level above a fixed-value OY. The latter violates the other half of the standard (which is to achieve OY), whether or not overfishing is the result. Standard 1 may be violated from either side of the OY equation—if the level of harvest is continually above, or below, a fixed-value OY. NOAA believes that the Act requires that an attempt be made to achieve OY on an annual basis year after year, though recognizing that this may not always happen.

The guidelines also state that in the case of a mixed species fishery, the OY for incidental species may be a function of the directed catch, or absorbed into an OY for related species.

NOAA believes that achievement of OY includes giving foreign fishing vessels reasonable opportunity to harvest that portion of the OY that will not be harvested by vessels of the United States (OY minus DAH, called the total allowable level of foreign fishing—TALFF). However, nothing precludes Councils from setting OY equal to DAH (effectively eliminating TALFF), if circumstances warranting it are documented. NOAA has written the guidelines to allow international economic considerations to influence the size of TALFF through adjustment of OY.

STANDARD 2

Application of this standard affects the operation of all the other standards. The level of information influences the establishment of MSY, OY, and management unit composition; it underlies determinations of allocations, judgments of efficiency, adjustments for variations and contingencies, and evaluations of costs and benefits. The guidelines address the questions of timeliness, opposing bodies of opinion, and practical utility of the information specified, and emphasize the continuing need for information for monitoring and in-season adjustment decisions under a flexible management regime. A voluntary system of data collection is permissible, but requires a justification under the Paperwork Reduction Act, and is not covered under the Act's confidentiality provision. (Under the NOAA data security system, all individually collected fishery data are treated internally with the same degree of protection.) It is acceptable to collect data within State boundaries when needed for proper implementation of an FMP, but duplication of effort should be avoided. Successful data collection depends on the protection of confidential data, the public trust in that protection, and the public perception of the valid uses of those data. The validity of the entire process may hinge on the cooperative attitudes of constituents, the research community, and the relevant governmental institutions.

STANDARD 3

Standard 3's principle of comprehensive management works well with standard 7's principle of avoiding duplication. The emphasis in the revision is on the scope, composition, and unity of the management unit, and on coordination and cooperation rather than on potential jurisdictional tension. NOAA believes that range-wide planning should encourage active State participation in the planning process, and that such planning will provide clear direction to the States as to what is needed to implement the proposed management regime effectively. This is consistent with Council practice; the result should be greater compatibility between Federal and State management measures.

Because the potential for incompatibility does exist, however, the guidelines require an FMP to discuss the interrelationship between State management activities and the proposed Federal regime. Federal regulations supersede any conflicting State regulations of FCZ fishing (F/V American Eagle v. Alaska, No. 2227 (Alaska, Nov. 21, 1980)). State landing laws and other forms of indirect regulation of FCZ fishing may be affected by implementing an FMP. The required analysis focuses attention on these impacts and on the effect of inconsistent State action on attaining the objectives of the FMP. This latter discussion will assist in determining Secretarial responsibilities under section 306(b) of the Act.

Standard 3 calls for management of a "stock" throughout its range. NOAA feels that the use of the words "stock," "fishery," and "management unit" is significant, and has endeavored to use the appropriate term in the guidelines. A stock may be larger than the fishery, as is the case when only a portion of the stock is actively fished. A fishery may be larger than a stock, when more than one stock is fished together. The management unit may ignore a portion of a fishery or stock when it includes a transboundary fishery or when a minor portion of the unit is fished within the area of authority of another Council. Examples are given of the perspectives around which a management unit may be organized.

STANDARD 4

To assist Councils in making what are usually the most controversial decisions within an FMP, NOAA has tried to confront the human issues surrounding fishery management directly, consistent with its concern for the economic and social consequences of regulation.

The guidelines address the "discrimination among residents of different States" issue as an extension of the Federal "privilege and immunities" clause of the U.S. Constitution, which means that Councils may not rely on, nor incorporate within an FMP, a State law that discriminates against residents of a different State. Discrimination is a distinct concept from equity.

Fishery management is essentially a series of allocations among present users, between present and future users, between public and private interests. The guidelines define "allocation" for purposes of the standard as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete groups of fishermen. Because only measures that meet the definition will be judged against the standard, this is a critical and sensitive differentiation.

Many management measures may have an *incidental* effect on the fishing privileges enjoyed by different groups of U.S. fishermen. Any quota has a distributive effect on present and future users through its impact on stock maintenance or rebuilding. Area closures may cause practical difficulties for smaller vessels or those located far from open areas. Seasonal quotas create difficulties for those whose economics of operation do not permit a long period of inactivity.

Direct allocations, by contrast, have been made by the several Councils in a variety of FMPs in the past: Quotas by classes of vessels (Atlantic groundfish), quotas for commercial and recreational fishermen (Atlantic mackerel), different fishing seasons for recreational and commercial fishermen (salmon), assignment of ocean areas to different gears (stone crab), and limiting permits to present users (surf clam). These direct allocations were approved under standard 4 because the Councils complied with the three statutory criteria of the standard in constructing their allocation schemes.

The guideline's definition is an attempted middle ground between all measures affecting fishing practices and measures designated as allocations in an FMP. The distribution must be direct and deliberate, but a Council could not disclaim an intent to allocate through a measure that had obvious and inevitable allocative effects.

NOAA believes that the required analysis of allocations and alternative schemes considered—including the status quo—will help to focus attention on the existing distribution of privileges and the alteration of that distribution which Federal management will impose. Each FMP should contain the Council's judgment on fairness and equity, conservation promotion, and possible monopolistic or oligopolistic effects of the proposed allocations.

The guidelines link "fairness" with FMP objectives and OY and acknowledge that fishing rights of treaty Indians and aboriginal Americans should be factored into Council judgments. Rational use of the resource is suggested as one way an allocation scheme may promote conservation. A more visible conservation purpose is illustrated by the moratorium on entry of new vessels into the surf clam fishery, initiated to mitigate a resource crisis in a stock.

STANDARD 5

NOAA believes that, for purposes of standard 5, efficiency can be defined as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, costs, or misuse of valuable biological and economic resources. In other words, Councils should choose management measures that achieve the FMP's objectives with minimum cost and burdens on society. NOAA believes that particular care should be taken when considering management of common property resources—where intensive individual market actions risk the "tragedy of the commons," a concept that comprises damage not only to the individual fisherman, but to the very resource on which he depends. Where there are no property rights, the role of government takes on the dimension of stewardship. NOAA also believes that managing at least cost to society and managing at least cost to the fisherman are not mutually exclusive. NOAA reads standards 5 and 7 together; to minimize costs of regulating also means to minimize costs to the industry of compliance.

The guidelines also recognize the difficulty inherent in reconciling particular economic and social needs of industry participants and consumers with this goal of efficiency. For example, maximizing employment opportunities by allowing continued overcapitalization instead of reducing effort might be considered inefficient in terms of an economic goal, but not necessarily in terms of a social goal. Or, when it is necessary to preserve a subsistence way of life or enjoyment of recreational fishing, application of the efficiency standard may not be appropriate. Councils thus may have to choose between—or rank—competing objectives.

NOAA believes that an FMP should not restrict the use of productive and cost-effective techniques of harvesting, processing or marketing, unless such restriction is necessary to achieve the conservation or social objectives of the FMP. For example, the Pacific salmon FMP provides for use of a barbless hook to decrease mortality of sublegal coho and chinook. The high seas salmon FMP requires "heads on" landing for finclipped coho and chinook to insure recovery of coded wire tags used to establish a needed distribution data base. In both cases, reduction in efficiency was outweighed by the conservation benefit.

Administrative efficiency can be a factor in choosing between management regime alternatives, as well. The Gulf of Mexico shrimp FMP's cooperative Texas closure, for example, increased the effectiveness and efficiency of enforcement.

NOAA chose to address the questions surrounding "limited access" in the context of standard 5 rather than in standard 4, even though limited access, by its nature, is an allocative measure. In fact, the guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the standard 4 guidelines. NOAA believes that placement within standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placing of limited access within the standard 5 context does not imply, however, that efficiency is always attained by limited access, nor that limited access is the most desirable method of attaining efficiency, nor that efficiency is the only purpose for limited access, nor that limited entry has always resulted in the benefits listed in the guidelines.

STANDARD 6

NOAA recognizes that each fishery exhibits unique uncertainties, and that the unpredictable nature of the fishery resource caused by vulnerability to changing conditions and unforeseeable events makes long-term planning difficult. Long-term objectives are more easily attainable in the more stable fisheries. The guidelines clarify that it is possible to compensate for variations by establishing buffers; protection against contingencies is urged through use of flexibility in the regulatory process.

STANDARD 7

The principles of standard 7 coincide with many earnest and recently intense efforts of NOAA and the Councils to streamline the FMP process. As more FMPs have come on line, the costs of enforcement and of collecting data for monitoring, while reduced per FMP, have increased in total. The rising costs of fishing, due in part to dependence on petroleum-based products, has intensified the need to consider the impact of potentially burdensome regulations. Thus, it has become necessary to be more precise in evaluating the costs to industry and to government, to support comprehensive management, and to work toward a flexible regulatory structure.

NOAA believes that the requirements of E.O. 12291 and other regulatory reform legislation quite appropriately focus attention on the threshold question of the actual need for management through regulation. Even when a Council believes there is an advantage to managing a fishery, growing public concern over excessive Federal regulation of private activities and over the need to reduce the cost of government emphasizes the responsiblity to ensure that FMPs are developed only for those fisheries where the need for Federal regulation can be clearly demonstrated. For these reasons, the guidelines propose criteria to assist in making these threshold decisions.

NOAA recognizes that the wide diversity of fisheries and of management objectives increases the difficulties of devising a quantitative cost/benefit analysis for fishery management measures. However, under the guidelines, the types of analyses suggested under standards 4 and 5 would be the first steps in evaluating relative distribution of gains and burdens produced by each alternative set of management measures. While weight of intangibles such as recreational enjoyment, habitat protection, or social dislocation often cannot be expressed in dollar terms, NOAA believes they should be considered and described as explicitly as possible.

PART 603—CONFIDENTIALITY OF STATISTICS

Sec.

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603.7 Release of statistics.

AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 1853(d).

SOURCE: 44 FR 70481, Dec. 7, 1979, unless otherwise noted.

§ 603.1 Purpose.

The purpose of this Part 603 is to prescribe procedures to preserve the confidentiality of any statistics submitted to the Secretary by any person in compliance with a requirement under a preliminary fishery management plan (PMP) or a fishery management plan (FMP).

§ 603.2 Definitions.

The terms used in this part shall have the same meaning as ascribed to them in section 3 of the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 *et seq.*) and part 601 of this chapter.

Aggregate or summary form, with respect to data, means data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person.

Assistant Administrator means the Assistant Administrator for Fisheries or his designee.

"*Data*", "*statistics*", and "*information*" are used interchangeably.

§ 603.3 Types of statistics covered.

This part applies to all information required to be submitted by any PMP or FMP or any regulation promulgated to implement a PMP or FMP, including, but not limited to: Information regarding the type and quantity of fishing gear used; catch by species in numbers of fish or weight thereof; areas in which fishing was engaged; time of fishing; number of hauls; and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.

§ 603.4 Collection and maintenance of statistics.

(a) *General.* (1) All statistics required to be submitted to the Secretary under a PMP or FMP shall be provided to the Assistant Administrator.

(2) After receipt of the statistics submitted to the Assistant Administrator, the appropriate NMFS official shall delete all identifying particulars from the statistics at the first practicable opportunity consistent with the needs of the NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, shall apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) *Collection agreements with States.* (1) The Assistant Administrator may enter into an agreement with a State authorizing the State to collect statistics on behalf of the Secretary.

(2) It is the policy of NMFS that NMFS will not enter into a cooperative collection agreement with a State unless the State has authority to protect the statistics from disclosure to the public in a manner similar to that of the Federal government, and in a manner consistent with these regulations.

§ 603.5 Access to statistics.

(a) *NOAA and NMFS personnel.* Statistics submitted as a requirement of a PMP or FMP and which will reveal the business or identity of the submitter shall only be accessible to:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Personnel within NMFS performing research that requires routine access;

(3) Other NOAA and NMFS personnel on a demonstrable need-to-know basis; and

(4) NMFS contractors that require access in order to perform functions authorized by the Federal contract.

(b) *State personnel.* (1) State access to, and use of, those statistics collected will depend upon the State's authority to require collection of the statistics on its own behalf.

(2) If the State has authority to collect the statistics in question but has no agreement with the Assistant Administrator, the State shall not have access to statistcs covered by this part which are submitted to the Assistant Administrator.

(c) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905 and NOAA/NMFS internal procedures.

§ 603.6 Controls system.

(a) The Assistant Administrator shall institute a control system to protect the confidentiality of statistics submitted in compliance with a PMP or FMP. The control system will:

(1) Identify those persons who have routine access to the statistics;

(2) Contain procedures to identify non-routine users and their use of the data; and

(3) Provide for safeguarding the data.

(b) This system will require that all persons who have access to the data be informed of the confidentiality of the data. These persons shall be required to sign a statement that they:

(1) Have been informed that the data are confidential, and

(2) Have reviewed and are familiar with the procedures to protect data confidentiality.

§ 603.7 Release of statistics.

(a) The Assistant Administrator shall not disclosre to the public any statistics required to be submitted under a PMP or FMP in other than aggregate or summary form except as required by court order. Disclosure as required by court order shall be made only after approval of the NOAA Office of General Counsel.

(b) All requests for statistics submitted in response to a requirement of a PMP or FMP shall be processed consistent with NOAA Freedom of Information Act (FOIA) regulations (15 CFR Part 903), NOAA Directives Manual 21-25, Department of Commerce Administrative Orders 205-12 and 205-14, and 15 CFR Part 4.

(1) The Assistant Administrator shall have the authority to issue initial denials of requests subject to the FOIA for statistics submitted in response to a PMP or FMP. Initial denials shall indicate that exemption 3 of FOIA (5 U.S.C. 552(b)(3)) is the basis for denial, making specific reference to section 303(d) of the Act and reciting in its entirety the first sentence of that section. Furthermore, citing this regulation, the denial shall indicate that the application of section 303(d) is nondiscretionary and shall refer specifically to the appropriate portion of the applicable PMP, FMP, or implementing regulation that required the submission of the requested statisitcs. Exemption (b)(4) (5 U.S.C. 552(b)(4)), as well as other applicable FOIA ex-

emptions, may be cited in addition, where appropriate.

(2) Appeals from initial denials should be addressed to the Administrator of NOAA, Department of Commerce, Washington, D.C. 20230. The Administrator shall not make a discretionary relase of statistics unless, upon review, it is determined that the Assistant Administrator improperly applied exemption (b)(3) to the requested statistics. In such cases the Administrator will instruct the Assistant Administrator to release the statistics to the requestor.

PART 611—FOREIGN FISHING

Subpart A—General

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Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

Source: 43 FR 59293, Dec. 19, 1978, unless otherwise noted.

Subpart A—General

Source: 50 FR 34979, Aug. 28, 1985, unless otherwise noted.

Effective Date Note: At 50 FR 34979, Aug. 28, 1985, §§ 611.1 through 611.16 (Subpart A) were revised, effective October 28, 1985, with the following exceptions, which will become effective January 1, 1986:

a. In § 611.5(c) (1) (ii) and (iii) and (c) (2) (ii) and (iii), the requirement for deployed gear to have "a light visible for two miles in good visibility, and a radio buoy;"

b. All of § 611.6(b) (the old § 611.6(e) remains in effect until superseded by this regulation);

c. All of § 611.6(d)(3) (the old § 611.6(c)(3) remains in effect until superseded by this regulation); and

d. All of § 611.9 (the old § 611.9 (a) through (d), (h) and (i) and Appendix III to § 611.9 remain in effect until superseded by this regulation).

For the convenience of the user, the text of Subparts A and B remaining in effect until October 28, 1985, and January 1, 1986, follows the text of this Part 611.

§ 611.1 Purpose and scope.

(a) This part governs all foreign fishing over which the United States exercises exclusive fishery management authority under the Magnuson Fishery Conservation and Management Act. Foreign vessels which are not operated for profit and are conducting recreational fishing only must comply with the provisions of this section, § 611.2, § 611.6(a)(1), applicable portions of § 611.7, and § 611.15.

(b) For additional provisions governing the Japanese harvest of salmonids, see the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786, as amended in 1962, TIAS 5385 and in 1978, TIAS 9242).

(c) Other U.S. laws and regulations apply to foreign vessels fishing in the U.S. FCZ, such as the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, and 50 CFR Part 216).

§ 611.2 Definitions.

In addition to the definitions contained in the Magnuson Act, and unless the context requires otherwise, in this Part 611, the terms used have the following meaning (some definitions in the Magnuson Act have been repeated here to aid fishermen in understanding the regulations):

Agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Allocated species means any species or species group allocated to a foreign nation under § 611.21 for catching by vessels of that nation.

Anadromous species means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to—

King salmon (*Oncorhynchus tshawytscha*)
Pink salmon (*Oncorhynchus gorbuscha*)
Chum salmon (*Oncorhynchus keta*)
Sockeye salmon (*Oncorhynchus nerka*)
Silver salmon (*Oncorhynchus kisutch*)
Rainbow (Steelhead) trout (*Salmo gairaneri*)
Atlantic salmon (*Salmo salar*)
Striped bass (*Morone saxatilis*)

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to enforce the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized species means any species or species group which a foreign vessel is authorized to retain in a joint venture by a permit issued under activity code 4 as described by § 611.3(c).

Center Director means the Director of one of the four NMFS Fisheries Centers described in Table 1 of Appendix A to this subpart or a designee.

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of Appendix A to this subpart or a designee.

Continental shelf fishery resources (CSFR) means the following plus any species added by the Secretary under section 3(4) of the Magnuson Act:

COELENTERATA

Bamboo coral (*Acanella* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callagorgia* spp.)
Precious red coral (*Corallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

CRUSTACEA

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon quinquedens*)

MOLLUSKS

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)
Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Arctica islandica*)

SPONGES

Glove sponge (*Spongia cheiris*)
Sheepswool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

Council means any of the Regional Fishery Management Councils established under the Magnuson Act.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing means any fishing by the vessels of a foreign nation for allocations of fish granted that nation under § 611.21.

Discard or *discarded* means to release or return fish to the sea, whether or not such fish are brought fully aboard a fishing vessel.

Exclusive economic zone (*EEZ*), with respect to U.S. fisheries, is deemed to have the same meaning as the fishery conservation zone (FCZ).

Fish (when used as a noun) includes finfish, elasmobranches, mollusks, crustaceans, and all other forms of marine animal or plant life, except marine mammals, birds, and highly migratory species.

Fish (when used as a verb) means to engage in "fishing," as defined below.

Fish over which the United States exercises exclusive fishery management authority means—

(a) All fish within the fishery conservation zone;

(b) All anadromous species beyond the fishery conservation zone, except when they are within any foreign nation's territorial sea or fishery conservation zone (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(c) All Continental shelf fishery resources beyond the fishery conservation zone.

Fishery means—

(a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(b) Any fishing for such stocks.

Fishery conservation zone (*FCZ*) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing or *to fish* means any activity, other than scientific research, which does, is intended to, or can reasonably be expected to result in catching or removing from the water fish over which the United States exercises exclusive fishery management authority. Fishing also includes the acts of scouting, processing and support.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (*FFV*) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or nations under Section 201(c) of the Magnuson Act.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Highly migratory species means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to—

Albacore (*Thunnus alalunga*)
Bigeye tuna (*Thunnus obsesus*)
Bluefin tuna (*Thunnus thynnus*)
Skipjack tuna (*Euthynnus pelamis*)
Southern bluefin tuna (*Thunnus maccoyii*)
Yellowfin tuna (*Thunnus albacares*)

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Optimum yield (OY) means the amount of fish—

(a) Which will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(b) Which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; and any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Processing means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of pw0kduct.

Prohibited species, with respect to any vessel, means any species of fish which that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Recreational fishing means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 611.15).

Regional Director means the Director of one of the five NMFS regions described in Table 1 of Appendix A to this subpart or a designee.

Round weight means the weight of the whole fish.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means which do not involve the catching of fish.

Secretary means the Secretary of Commerce or a designee.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

Support means any operation by a vessel assisting fishing by foreign or U.S. fishing vessels, including—

(a) Transferring or transporting fish or fish products; or

(b) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under Title III of the Magnuson Act or a preliminary fishery management plan prepared under section 201(h) of the Magnuson Act has been implemented.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or *U.S. vessel* means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*), and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

§ 611.3 Vessel permits.

(a) *General.* (1)(i) Each FFV fishing under the Magnuson Act must have on board a completed permit form for a permit issued under this section, unless it is engaged only in recreational fishing.

(ii) It is a rebuttable presumption that fish or fish products on board a vessel conducting fish transfer operations within the FCZ or within the boundaries of any State are fish over which the United States exercises exclusive fishery management authority, so that an FFV engaged in such transfer activity at sea is "fishing under the Magnuson Act."

(2) The Secretary of State may issue annual registration permits for FFV's fishing under the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786; amended in 1962, TIAS 5385; and in 1978, TIAS 9242) upon application from the foreign nations.

(3) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidential to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson Act, the applicable GIFA, this part, and any permit issued under the Magnuson Act and this part. The owners and operators of each FFV bear civil responsibility for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described below, but the permits may be modified by regulations of this part, and by the conditions and restrictions attached to the permit (see paragraphs (e)(v) and (l) of this section). The Assistant Administrator may issue a permit for one of the activity codes 1, 2, or 3. The Assistant Administrator will issue a permit with the additional activity code 4 for FFV's authorized to assist U.S. fishing vessels in a joint venture. The activity codes are described as follows:

Activity code 1—Catching, scouting, processing and support.

Activity code 2—Processing, scouting and support.
Activity code 3—Support.
Activity code 4—Assisting U.S. fishing vessels as allowed by the other assigned code (joint venture).

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the Department of State. Application forms are available from OES/OFA, Department of State, Washington, D.C. 20520. The applicant should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Fishery Management Councils, and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 611.22.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (activity code 4) must provide the additional information specified by the permit application form.

(4) Each foreign nation may substitute one FFV for another by submitting a new vessel information form and a short explanation of the reason for the substitution to the Department of State. Each substitution is considered a new application and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the Department of State has notified the appropriate Council(s) of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator through the Department of State after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson Act and approves the permit application;

(ii) The foreign nation has paid the fees, including any surcharge fees; and provided any assurances required by the Secretary in accordance with the provisions of § 611.22;

(iii) The foreign nation has appointed an agent;

(iv) The foreign nation has identified a designated representative; and

(v) The general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or to prevent significant impairment of the national defense or security interests, have been accepted by the nation issuing the FFV's documents.

(2) The Assistant Administrator will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must ensure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. The Assistant Administrator may authorize the modification and use of the previous year's permit forms to be used on an interim basis in place of the current year's permit forms if the current forms were not made available to the designated representatives for timely distribution. The FFV owner or operator must accurately complete the permit form prior to fishing in the FCZ.

(3) A completed permit form must contain—

(i) The name and IRCS of the FFV and its permit number;

(ii) The permitted fisheries and activity codes;

(iii) The date of issuance and expiration date, if other than December 31; and

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended or the nation issuing the FFV's documents does not accept amendments to the permit made by the Assistant Adminstrator in accordance with the procedures of paragraph (l). The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under Title 15 CFR Part 904 if the vessel is involved in the commission of any violation of the Magnuson Act, the GIFA, or this part; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson Act has become overdue; or as otherwise specified in the Magnuson Act.

(j) *Fees.* Permit application fees are described at § 611.22.

(k) *Change in application information.* (1) The foreign nation must report in writing any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(l) *Permit amendments.* (1) The Assistant Administrator may amend a permit by adding "additional restrictions" for the conservation and management of fishery resources covered by the permit, or for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Compliance with the added "additional restrictions" is a condition of the permit. Violations of added "additional restrictions" will be treated as violations of this part.

(2) The Assistant Administrator may make proposed "additional restrictions" effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States, to allow for the continuation of ongoing fishing operations, or to allow for fishing to begin at the normal time for opening of the fishery.

(3) The Assistant Administrator will send proposed "additional restrictions" to each nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the Commandant of the Coast Guard. The Assistant Administrator will, at the same time, publish a notice of any significant proposed "additional restrictions" in the FEDERAL REGISTER. The notice will include a summary of the reasons underlying the proposal, and the reasons that any proposed "additional restrictions" are made effective immediately.

(4) The nation whose vessels are involved, the owners of the affected vessels, their representatives, the agencies specified in paragraph (l)(3) of this section, and the public may submit written comments on the proposed "additional restrictions" within 30 days after publication in the FEDERAL REGISTER.

(5) The Assistant Administrator will make a final decision regarding the proposed "additional restrictions" as

soon as practicable after the end of the comment period. The Assistant Administrator will provide the final "additional restrictions" to the nation whose vessels are affected (via the Secretary of State) according to the procedures of paragraph (e) of this section. The Assistant Administrator will include with the final "additional restrictions" to the nation, a response to comments submitted.

(6) "Additional restrictions" may be modified by following the procedures of paragraphs (l)(2) through (l)(5) of this section.

(Approved by the Office of Management and Budget under OMB control number 0648-0089)

§ 611.4 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the FCZ to the Coast Guard and NMFS as specified in this section.

(b) All reports required by this section must be in English and in the formats specified in the appendices. Reports should be delivered by private or commercial communications facilities to the appropriate Coast Guard commander, who will relay them to NMFS. Weekly reports may also be delivered directly to the appropriate NMFS Region or Center (Tables 1 and 2 of Appendix A to this subpart). (The required reports may be delivered to the closest Coast Guard communication station as indicated in Table 3 of Appendix A or other Coast Guard communication station *only if* adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy or Telex where available. In this section, a message is considered *transmitted* when its receipt is acknowledged by a communications facility and considered *delivered* upon its receipt by the offices of the appropriate Coast Guard commander, NMFS Regional Office, or NMFS Center identified in Appendix A. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event as specified in this paragraph and as illustrated in Appendix B to this subpart (EXCEPTION: § 611.81(d)). Each FFV report must contain the following information: The message identifier "VESREP" to indicate it is a vessel activity report, FFV name, international radio call sign (IRCS), date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (use fishing area code from Appendix C to this subpart) where required, the appropriate action code, confirmation codes where required, and the other information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *BEGIN.* Each operator must specify the date, time, position and area the FFV will actually BEGIN fishing in the FCZ and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board when entering the FCZ (action code BEGIN). The message must be *delivered* at least 24 hours before the vessel begins to fish.

(2) *DEPART.* Each operator must specify the date, time, position, and area the FFV will DEPART the FCZ to embark or debark an observer, to visit a U.S. port, to conduct a joint venture in internal waters, or to otherwise temporarily leave an authorized fishing area but not depart the seaward limit of the FCZ (action code DEPART). The message must be *transmitted* before the FFV departs the present fishing area and *delivered* within 24 hours of its transmittal.

(3) *RETURN.* Each operator must specify the date, time, position, and area the FFV will RETURN to the FCZ following a temporary departure, and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric

ton) on board which were received in a joint venture in internal waters (action code RETURN). The message must be *transmitted* before returning to the FCZ and *delivered* within 24 hours of its transmittal.

(4) *SHIFT.* Each operator must report each SHIFT in fishing area (as shown in Appendix C to this subpart) by specifying the date, time, and position the FFV will start fishing, and the new area (action code SHIFT). The message must be *transmitted* before leaving the original area and *delivered* within 24 hours of its transmittal. If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during one fishing day (0001-2400 GMT). This message must be transmitted prior to the last shift expected to be made in the day and *delivered* within 24 hours of its transmittal.

(5) *JV OPS.* Each operator must specify the date, time, position, and area at which the FFV will START joint venture operations (action code START JV OPS) or END joint venture operations (action code END JV OPS). These reports must be made in addition to other activity reports made under this section. Each message must be *transmitted* before the event and *delivered* within 24 hours of its transmittal.

(6) *TRANSFER.* The operator of each FFV which anticipates a support operation in which the FFV will receive fish or fisheries product must specify the date, time, position, and area the FFV will conduct the TRANSFER and the name and IRCS of the other FFV involved (action code TRANSFER). The message must be *transmitted* prior to the transfer and *delivered* within 24 hours of its transmittal. The movement of raw fish from a catching vessel or U.S. fishing vessel to a processing vessel and the return of nets or codends is not considered a transfer.

(7) *OFFLOADED.* Each operator must specify the date, time, position and area the FFV OFFLOADED fish or fisheries products TO another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) offloaded (action code OFFLOADED TO). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the FCA.

(8) *RECEIVED.* Each operator must specify the date, time, position, and area the vessel RECEIVED fish or fisheries products FROM another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) received (action code RECEIVED FROM). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* within 24 hours of its transmittal and before the FFV ceases fishing in the FCZ.

(9) *CEASE.* Each operator must specify the date, time, position, and area the FFV will CEASE fishing in order to leave the FCZ (action code CEASE). The message must be *delivered* at least 24 hours before the FFV's departure.

(10) *CHANGE.* Each operator must report any CHANGE TO the FFV's operations if the position or time of an event specified in an activity report will vary more than five nautical miles or four hours from that previously reported, by sending a revised message inserting the word "CHANGE" in front of the previous report, repeating the name, IRCS, date, and time of the previous report, adding the word "TO" and the complete revised text of the new report (action code CHANGE TO). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports of paragraphs (c)(1) through (c)(9) must be transmitted and delivered as if the CHANGE report was the original message.

(11) *CANCEL.* Each operator wishing to CANCEL a previous report may do so by sending a revised message, and inserting the word "CANCEL" in

front of the previous report's vessel name, IRCS, date, time and action code canceled (action code CANCEL). The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the FFV does not pass within five nautical miles of the position given in the report within four hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. An FFV operator may retransmit reports on the behalf of another FFV, if authorized by that FFV's operator. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format in Appendix B of this subpart should be modified so that each line of text under "VESREP" is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the FCZ must submit appropriate weekly reports through the nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by Telex, but a completed copy of the report form (see Appendices F, G, and H to the subpart) must be mailed or hand delivered to confirm the Telex. Designated representatives may include more than one vessel report in a Telex message, if the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional or Center Director may accept or reject any correction and initiate any appropriate civil penalty actions.

(2) *Weekly catch report (CATREP).* (i) The operator of each FFV must submit a weekly catch report stating any catch (activity code 1) in round weight of each species or species group allocated to that nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subpart C through G of this part). Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if that processing vessel (activity code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's which do not catch or receive foreign-caught fish during the reporting period.

(ii) Appendix F to this subpart contains the instructions and form to submit a CATREP.

(3) *Weekly receipts report (RECREP).* (i) The operator of each FFV must submit a weekly report stating any receipts of U.S.-harvested fish in a joint venture (activity code 4) for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (see Subparts C through G of this part), for each fishing area by authorized or prohibited species or species group: days fish received; round weight retained or returned to the U.S. fishing vessel; number of codends received; and number of vessels transferring codends. The report must also include the names of U.S. fishing vessels transferring codends during the week. No report is required for FFV's which do not receive any U.S.-harvested fish during the reporting period.

(ii) Appendix G to this subpart contains the instructions and form to submit a RECREP.

(4) *Marine mammal report (MAMREP).* (i) The operator of each FFV must submit a weekly report stating any incidental catch or receipt of marine mammals (activity codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught (if more than one of the same species and condition), and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part). Foreign catching vessels delivering unsorted, inprocessed fish to processing vessel are not required to submit

MAMREP's provided that the processing or factory vessel (activity code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S. harvested fish in a joint venture (activity code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is requirled for FFV's which do not catch or receive marine mammals during the reporting period.

(ii) Appendix H to this subpart contains the instructions and form to submit a MAMREP.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional or Center Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. For fisheries off Alaska, weekly reports, other than weekly receipts reports (RECREP's), must be received by 1900 GMT on the Friday following the end of the reporting period. For fisheries off Alaska, weekly receipts reports (RECREP's) must be received by 19 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Director, the designated representative may submit weekly reports to some other facility of NMFS (See Table 2 to Appendix A to this subpart).

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.5 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an international radio call sign (IRCS) must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM-1, JCZM-2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mother ship whose IRCS is JCZM; JANP-1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP.)

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block roman alphabet letters and arabic numerals at least one meter in height for FFV's over 20 meters in length, and at least one-half meter in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear which is not physically and continuously attached to an FFV: (i) is clearly marked at the surface with a buoy displaying the vessel identification of the FFV (see paragraph (a) of this section) to which the gear belongs, (ii) has attached a light visible for two miles at night in good visibility, and (iii) has a radio buoy.

Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with: (i) a buoy displaying the vessel identification of the FFV to which the gear belongs (see paragraph (a) of this section, (ii) a light visible for two miles at night in good visibility, and (iii) a radio buoy.

Additional requirements may be specified in Subparts C through G for the fishery in which the vessel is engaged.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the FFV's activity and are properly functioning.

EFFECTIVE DATE NOTE: At 50 FR 34984, Aug. 28, 1985, § 611.5 was revised, effective October 28, 1985, except the requirement for deployed gear to have "a light visible for two miles in good visibility, and a radio buoy" appearing in paragraphs (c)(1) (ii) and (iii) and (c)(2) (ii) and (iii) which becomes effective January 1, 1986. See the "Effective Date Note" and superseded text following the text of this Part 611.

§ 611.6 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson Act and this part.

(2) The operator of each FFV must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment.* (1) Each FFV must be equipped with a VHF-FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continous listening watch on channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraph and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony and at least one set of working frequencies identified in Table 3 to Appendix A of this subpart appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a foreign processing vessel are exempt from the requirements of paragraph (b)(2) of this section.

(4) FFV's with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraph (b)(1) and (b)(2) of this section.

(5) The appropriate Regional Director, with the agreement of the appropriate Coast Guard commander, may, upon request by a foreign nation, accept alternatives to the radio requirements of this section to certain FFV's or types or FFV operating in a fishery, provided they are adequate for the communications needs of the fishery.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF-FM radiotelephone, 2182 kHz radiotelephone, 500 kHZ radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 611.5 of this part;

(ii) "RY-CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF-FM radiotelphone (channel 16), 2182 kHz radiotelephone (where required), 500 kHz radiotelegraph (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this part.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF-FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate boarding by the authorized officer and the boarding party or an observer;

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent national standard approved by letter from the Assistant Administrator, with agreement with the Coast Guard. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joints below top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 meter (2 feet 3 inches) nor more than 0.80 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.20 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the au-

thorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

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EFFECTIVE DATE NOTE: At 50 FR 34984, Aug. 28, 1985, § 611.6 was revised, effective October 28, 1985, with the exception of paragraphs (b) and (d)(3) which become effective January 1, 1986. See the "Effective Date Note" and superseded text following the text of this Part 611.

§ 611.7 Prohibitions.

(a) It is unlawful for any person to do the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, the applicable GIFA, this part, or any other permit issued under this part;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson Act, the applicable GIFA, this part, or any permit issued under this part;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 611.3;

(8) Engage in any fishing activity within the FCZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Retain or attempt to retain, within the FCZ, directly or indirectly, any U.S.-harvested fish, unless the FFV has a permit for activity code 4 which authorizes the receipt of that species of U.S.-harvested fish;

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this part;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit appli-

cation or permit form as specified in §§ 611.3 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 611.3(k);

(14) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this part;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tampering with, destroying, or discarding an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass an authorized officer or observer (including sexual harassment) by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis;

(18) Fail to provide the required assistance to an observer as described at §§ 611.8 (c) and (d);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this part.

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this part;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this part;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the FCZ which might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue activity codes 1 through 4 after those activity codes have been canceled under § 611.13;

(25) Violate any provisions of Subparts C through G of this part;

(26) Violate any provision of this part, the Magnuson Act, the applicable GIFA, any notice issued under this part or any permit issued under this part; or

(27) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any State, unless the fishing is authorized by the Governor of that State as permitted by section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that State; or

(2) Within the FCZ, or for any anadromous species or continental shelf fishery resources beyond the FCZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 611.3 or by the Secretary of State under the International Convention for the High Seas Fisheries of the North Pacific Ocean.

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (See Table 2 to Appendix A to this subpart) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson Act, no FFV may conduct fishing operations within the FCZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wishing to fish within the FCZ will submit to the appropriate Regional Director or Center Director; and also to the Chief, Office of Enforcement, National Marine Fisheries Service, Washington, D.C. 20235, ATTN: F/M5 (see Table 4 to Appendix A to this subpart), a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the FCZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the FCZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than five days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Center Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV which are equivalent to those provided to the officers of that vessel;

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional or Center Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages;

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position;

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process weigh, or store fish or fish products at any time;

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations;

(7) Provide the observer copies of any records required by these regulations upon demand;

(8) Notify the observer at least 15 minutes before fish are brought aboard or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified; and

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer three hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 611.6(d) to ensure the safety of the observer during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(e) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Center Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(f) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Center Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(g) *Supplementary observer payment—*(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a Federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 611.22(b)(2)(ii) of these regulations. Billing schedules will be specified by the terms of the contract between NOAA and the contractors beginning in FY 1986. During FY 1985, the billing schedule will be determined by the Assistant Administrator to ensure sufficient funding for the program. Billings for supplementary observer coverage will be approved by the appropriate Regional or Center Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country except as provided for by the Assistant Administrator. All bills must be paid within ten working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (g)(4) of this section and § 611.22(b)(3) of these regulations.

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels and additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers;

(ii) The costs of post-certification training required by paragraph (i) (2) of this section;

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional or Center Director will designate posts of duty for supplementary observers;

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials; and

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer;

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Center Director according to the requirements of the fishery to which the supplementary observer will be deployed;

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages;

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data;

(v) The costs for data editing and entry;

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer; and

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(h) *Supplementary observer contractors*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services;

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers;

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation; and

(iv) All data on costs.

(i) *Supplementary observers—certification, training*—(1) *Certification.* The appropriate Regional or Center Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Center Director as equivalent to that received by persons used as observers by the NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202-735 (as provided by the contractor).

(j) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified as provided for by paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202-735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the U.S. Coast Guard or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by the NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer in writing of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

(Approved by the Office of Management and Budget under OMB control number 0648-0075)

§ 611.9 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the FCZ for three years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the three years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson Act.

(b) *Communications log.* The owner and operator of each FFV must record, in a separate communications log at the time of transmittal, the time and content of each notification made under § 611.4.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (activity code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the FCZ. The operator must record in the log within twelve hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed;

(2) The product weight, by species and product (use species and product codes from Appendices D and E of this subpart) of all fish transferred to the nearest hundredth of a metric ton (0.01 mt); and

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (activity code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see Table 2 to Appendix A to this subpart) in which the FFV is engaged according to this section and in the format specified in Appendix I to this subpart or other format authorized under paragraph (k) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the FCZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a State. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (activity code 1) and which delivers all catches to a processing vessel, must maintain only SECTION ONE-EFFORT, of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the fishery in which the FFV is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix I to this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis—

(i) A consecutive page number beginning with the first day the vessel started fishing operations within the FCZ and continuing throughout the log;

(ii) The date (based on GMT);

(iii) The FFV's name;

(iv) The FFV's IRCS;

(v) The FFV's U.S. permit number;

(vi) The FFV's noon (1200 (GMT) position in geographic coordinates; and

(vii) The master or operator's signature or title.

(2) SECTION ONE-EFFORT must contain for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year;

(ii) The fishing area in which the trawl or set was completed;

(iii) The gear type;

(iv) The time the gear was set;

(v) The position of the set;

(vi) The course of the set;

(vii) The sea depth;

(viii) The depth of the set;

(ix) The duration of the set;

(x) The hauling time;

(xi) The position of the haul;

(xii) The number of pots or longline units (where applicable);

(xiii) The average number of hooks per longline unit (where applicable);

(xiv) The trawl speed (where applicable);

(xv) The mesh size of the trawl's codend (where applicable); and

(xvi) The estimated total weight of the catch for the trawl or set, to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each trawl or set—

(i) The consecutive set or trawl number from SECTION ONE;

(ii) The catch of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The prohibited species catch to at least the nearest tenth of a metric ton (0.1 mt) round weight or by number, as required by the regulations for the fishery in which the FFV is engaged; and

(iv) The species code of each marine mammal caught and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught.

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total catch of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch; and

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species caught and product produced—

(i) The product by species code and product type;

(ii) The daily product recovery rate of each species and product;

(iii) The daily total product produced by species to at least the nearest hundredth of a metric ton (0.1 mt);

(iv) The cumulative total of each product to at least the nearest hundredth of a metric ton (0.01 mt);

(v) The cumulative amount of product transferred;

(vi) The balance of product remaining aboard the FFV;

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest hundreth of a metric ton (0.01 mt); and

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest hundredth of a metric ton (0.01 mt).

(f) *Daily consolidated fishing log.* The owner or operator of each FFV which receives unsorted, unprocessed fish from foreign catching vessels (activity code 2) for processing must maintain a daily consolidated fishing log of the effort, catch and production of its associated foreign catching vessels and the processing vessel, as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (e) of this section. The owner or operator must maintain a separate log for each fishery in which the FFV is engaged (see Table 2 of Appendix A to this subpart) on a daily and cumulative basis for the permit period according to this section and in the format specified specified in Appendix J to this subpart or other format authorized by paragraph (k) of this section. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily consolidated fishing log—contents.* Daily consolidated fishing logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix J to this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION TWO-CATCH must contain for each foreign catching vessel on a daily basis and by area—

(i) The name and IRCS of the foreign catching vessel;

(ii) The fishing area number from which the fish were caught (Where the foreign catching vessel caught fish in more than one area, a daily entry for each area must be made);

(iii) The receipts of each allocated species or species group to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iv) The receipts of each prohibited species and species group to at least the nearest tenth of a metric ton (0.1 mt) round weight, or by number, as required by the fishery in which the FFV is engaged; and

(v) The species code of each marine mammal received and its condition when released.

(3) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups received;

(ii) For each allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily receipts by fishing area; the daily catch for all fishing areas; and the cumulative total catch;

(iii) For the total receipts of allocated species—the amount to at least the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total receipts by fishing area, daily total receipts for all fishing areas, and cumulative total receipts; and

(iv) The receipts by fishing area, daily total and cumulative total of each prohibited species.

(4) SECTION THREE-PRODUCTION must contain on a daily basis for each allocated species received and product produced that information required in paragraph (e)(5) of this section.

(h) *Daily joint venture log.* The operator of each FFV which receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (activity code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). This log is separate and in addition to any log required by paragraphs (d) and (f) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged on a daily and cumulative basis according to this section and in the format specified in Appendix K to this subpart or other format authorized under paragraph (k) of this section. Receipts of fish caught outside the FCZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(i) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix K of this subpart or other format authorized under paragraph (k) of this section.

(1) SECTION ONE-EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION ONE-EFFORT must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year;

(ii) The name of the U.S. fishing vessel the codend was received from;

(iii) The fishing area where the codend was received;

(iv) The time the codend was received;

(v) The position the codend was received; and

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) SECTION TWO-CATCH must contain for each codend received—

(i) The consecutive codend number from SECTION ONE;

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest tenth of a metric ton (0.1 mt) round weight; and

(iv) The species code of each marine mammal received and its condition when released.

(4) SECTION TWO-CATCH must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received;

(ii) The daily disposition, as described in paragraph (i)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups;

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups; and

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (i)(3)(iii).

(5) SECTION THREE—PRODUCTION must contain on a daily basis

for each authorized species or species group received and product produced that information required in paragraph (e)(5) of this section.

(j) *Daily log maintenance.* The logs required by paragraphs (e) through (i) of this section must be maintained separately for each fishery in Subparts C through G (see Table 2 to Appendix A to this subpart).

(1) The effort section (all of SECTION ONE) of the daily logs must be updated within two hours of the hauling or receipt time. The catch or receipt by trawl or set (SECTION TWO) must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (SECTION TWO) and the production portion (SECTION THREE) of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition "C"or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition "D" or "R") must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed five percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink with corrections to be accomplished by lining out and rewriting rather than erasure.

(k) *Alternative log formats.* As an alternative to the use of the specific formats described in Appendices I, J, and K to this subpart, a nation may submit a proposed log format for FFV's of that nation for a general type of fishery operation in a fishery (i.e. joint venture operations) to the appropriate Regional Director and the Coast Guard commander (see Appendix A to this subpart). With the agreement of the Coast Guard commander, the Regional Director may authorize the use of that log format for vessels of the requesting nation.

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EFFECTIVE DATE NOTE: At 50 FR 34988, Aug. 28, 1985, § 611.9 was revised, effective January 1, 1986. See the "Effective Date Note" and superseded text following the text of this Part 611.

§ 611.10 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for activity code 1 or 2 may scout for fish. Scouting may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(c) *Processing.* Each FFV with activity code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under activity code 4, and under such other circumstances as may be designated in these regulations or the permit.

(d) *Support.* Each FFV with activity code 1, 2, or 3 may support other permitted FFV's. Support operations may be conducted whenever and wherever catching or processing for the FFV's being supported are permitted, and under such other circumstances as may be designated in these regulations or the permit.

(e) *Joint ventures.* Each FFV with activity code 4 in addition to activity codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the FCZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels despite closures under § 611.13(a).

(f) Each FFV authorized by the Governor of a State under Section 306(c) of the Magnuson Act may engage in processing and support of U.S. fishing vessels within the internal waters of that State, in compliance with terms and conditions set by the authorizing Governor.

§ 611.11 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea immediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish which an FFV has not been specifically allocated or authorized under this part to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this secton.

§ 611.12 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The opeator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing as required by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part).

(b) *Gear conflicts.* The operator of each FFV which is involved in a conflict or which retrieves the gear of another vessel must immediately notify the appropriate Coast Guard commander identified in Appendix A to this subpart and request disposal instructions. Each report must include:

(1) The name of the reporting vessel;

(2) A description of the incident and articles retrieved including the amount, type of gear, condition, and identification markings;

(3) The location of the incident; and

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the FCZ may not dump overboard, jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Goast Guard commander or other authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear into the FCZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the FCZ, the vessel operator must immediately report the incident to the appraopriate Coast Guard Commander indicated in Appendix A to this subpart, and give the information required in paragraph (b) of this section.

(Approved by the Offices of Management and Budget under OMB control number 0648-0075)

§ 611.13 Fishery closure procedures.

(a) Activity codes 1 and 2 for a fishery are automatically canceled in the following cases unless otherwise specified by Subparts C through G to this part when—

(1) The optimum yield for any allocated species or species group has been reached in that fishery;

(2) The total allowable level of foreign fishing or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(b) Activity code 4 is automatically canceled when—

(1) The optimum yield for a species with a joint venture processing (JVP) amount is reached;

(2) The JVP amount for a species or species group is reached; or,

(3) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Director is authorized to close a fishery on behalf of the Assistant Administrator. The Regional Director will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each nation and the owners and operators of all FFV's of that nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 611.22(b)(2) is reestablished.

§ 611.14 Scientific research.

(a) The term "scientific research" contained in paragraph (r) of § 611.2 may include certain fishing activities such as the catching, taking, or harvesting of fish in commerical quantities, or the use of gear capable of catching, taking, or harvesting fish in commerial quantities, or fishing in areas, at times, for species, and with gear, any of which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

(b) For the purpose of gathering additional management information, the Center Director may authorize limited "scientific research" as described in paragraph (a) of this section under terms and conditions to be specified by the Center Director.

§ 611.15 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, § 611.1, § 611.2, § 611.6(a)(1), and § 611.7 (as applicable). Such vessels may conduct recreational fishing within the FCZ and within the boundaries of a State. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person on board any foreign vessel conducting recreational fishing must comply with any federal laws or regulations applicable to the domestic fishery while in the FCZ and any State laws or regulations applicable while in State waters.

§ 611.16 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws which implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

APPENDIX A TO SUBPART A—ADDRESSES, AREAS OF RESPONSIBILITY AND COMMUNICATIONS

TABLE 1—ADDRESSES

NMFS regional directors	NMFS center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930. Telex No. 940007. Telephone (617) 281-3600	Director, Northeast Fisheries Center, National Marine Fisheries Service, NOAA, Woods Hole, Massachusetts 02543. Telephone (617) 548-5123	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, N.Y. 10004. Telex No. 126831. Telephone (212) 668-7877
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Telephone (813) 893-3141	Director, Southeast Fisheries Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone (305) 361-4284	As above
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Seattle, Washington 98115. Telex No. 9104442786. Telephone (206) 526-6150	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115. Telex No. 329422. Telephone (206) 526-4000	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, California 94501. Telex No. 172343. Telephone (415) 437-3700
Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801. Telex No. 09945-377. Telephone (907) 586-7221	Director, Northwest and Alaska Fisheries Ctr, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, Northeast, BIN C15700, Bldg. 4, Seattle, Washington 98115. Telex No. 329422. Telephone (206) 526-4000	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, Alaska 99801. Telex No. 45305. Telephone (907) 586-7200. After hours (907) 586-7340
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731. Telephone (213) 548-2575	Director, Southwest Fisheries Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, California 92038. Telephone (619) 453-2820	Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813. Telex No. 392401. Telephone (808) 546-7597

TABLE 2—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean north of Cape Hatteras	Northwest Atlantic Ocean Fishery, including the Hake Fishery	Director, Northeast Region Director, Northeast Center	Commander, Atlantic Area

TABLE 2—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES—Continued

Area of responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean south of Cape Hatteras	Atlantic Billfish and Sharks Fishery	Director, Southeast Region	Commander, Atlantic Area.
	Royal Red Shrimp Fishery		
Gulf of Mexico		Director, Southeast Center	
Caribbean Sea			
Pacific Ocean off the States of California, Oregon, and Washington	Pacific Coast Groundfish Fishery	Director, Northwest Region Director, Northwest and Alaska Center	Commander, Pacific Area
North Pacific Ocean and Bering Sea off Alaska	Gulf of Alaska Groundfish Fishery	Director, Alaska Region	Commander, Seventeenth Coast Guard District
	Bering Sea and Aleutian Islands Groundfish Fishery	Directory, Northwest and Alaska Centers	
	Snail Fishery		
Pacific Ocean off Hawaii and other U.S. insular possessions in the Central and Western Pacific	Seamount Groundfish Fishery	Director, Southwest Region	Commander, Fourteenth
	Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery	Director, Southwest Center	Coast Guard District
	Precious Coral Fishery		

TABLE 3—U.S. COAST GUARD COMMUNICATIONS STATIONS AND FREQUENCIES

U.S. Coast Guard Communications Station	IRCS	Radiotelegraphy			Radiotelephone	
		kHz	mHz	Time[1]	Channel[2]	GMT time
Boston	NMF	500		All	B	All.
Portsmouth	NMN	500	8, 12	All	A	0200-1200.
			16	HJ	B, C	All.
					D	1200-0200 (On request)
Miami	NMA	500		All	B	All
San Juan	NMR	500	8, 12	All	None	
			16	HJ		
New Orleans	NMG	500		All	A	0200-1200.
					B, C	All.
					D	1200-0200.
					E	(On request)
San Francisco	NMC	500	8	All	A, B, C	All.
			6	HN	D	0200-2400
			16	HJ	E	(On request)
Honolulu	NMO	500	8, 12	All	A, B, C	All.
			22	HJ	D, F	(On request)
Guam	NRV	500		All	None	
			8, 12	HN		
Kodiak	NOJ	500		All	B	All.
					A, C, D, and E	(On Request)

[1] HJ means 2 hours after sunrise until 2 hours before sunset, local time. HN means 2 hours before sunset until 2 hours after sunrise, local time.

[2] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	12342.4
E	17307.3	16534.4

TABLE 4—ADDRESSES FOR REPORTS AND SUBMITTALS

Fishery	Permit applications § 611.3(d)	Activity reports § 611.4(c)	Weekly reports § 611.4(f)	Effort plan § 611.8(b)	Gear conflicts § 611.12(b)	Permit fees, poundage fees, surcharges, and observer fees § 611.22
Northwest Atlantic Ocean Fishery, including the Hake Fishery.	DOS	CG Atlantic Area, NMFS-NER	NMFS-NER NMFS-NER	NMFS-NER, Attn: Observer Program, NMFS-F/M5.	CG Atlantic Area	NMFS-F/M12.
Atlantic Billfish and Sharks Fishery.	DOS	CG Atlantic Area	NMFS-SER	NMFS-SER NMFS-F/M5	CG Atlantic Area	NMFS-F/M12.
Royal Red Shrimp Fishery.		NMFS-SER				
Pacific Coast Groundfish Fishery.	DOS	CG Pacific Area, NMFS-NWR	NMFS-NWC	NMFS-NWC NMFS-F/M5	CG Pacific Area	NMFS-F/M12
Gulf of Alaska Groundfish Fishery.	DOS	CG Dist. 17	NMFS-AKR	NMFS-NWC NMFS-F/M5	CG Dist. 17	NMFS-F/M12
Bering Sea and Aleutian Islands Groundfish Fishery.		NMFS-AKR				
Snail Fishery						
Seamount Groundfish Fishery.	DOS	CG Dist. 14	NMFS-SWR	NMFS-SWR	CG Dist. 14	NMFS-F/M12
Pacific Billfish, Oceanic Sharks, Wahoo and Mahimahi Fishery.		NMFS-SWR		NMFS-F/M5		
Precious Coral Fishery.						

ABBREVIATIONS:
DOS—Department of State, OES/OFA, Washington, D.C. 20520
NMFS:
—F/M5—Chief, Office of Enforcement, National Marine Fisheries Service, 3300 Whitehaven St., Washington, D.C. 20235, ATTN: F/M5.
—F/M12—Chief, Fees, Permits, and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven St., NW., Washington, D.C. 20235, ATTN: F/M12.
—NER—Director, Northeast Region (see Table 1)
—SER—Director, Southeast Region (see Table 1)
—NWR—Director, Northwest Region (see Table 1)
—NWC—Director, Northwest and Alaska Fisheries Center (see Table 1)
—AKR—Director, Alaska Region (see Table 1)
—SWR—Director, Southwest Region (see Table 1)
CG Atlantic Area—Commander, Atlantic Area (see Table 1)
CG Pacific Area—Commander, Pacific Area (see Table 1)
CG Dist. 17—Commander, Seventeenth Coast Guard District (see Table 1)
CG Dist. 14—Commander, Fourteenth Coast Guard District (see Table 1)

APPENDIX B TO SUBPART A—VESSEL ACTIVITY REPORTS

1. Activity Report Format

A. "From" line: Name of the FFV and its IRCS.

B. "To" line: Include appropriate Coast Guard commander and NMFS region as addressees.

C. Date: Expressed numerically as month and day, based on GMT (two digits each), followed by letter "D" and a confirmation code (A 2 digit sum of the 4 digits in the date. A sum of less than 10 must be preceded by a 0).

D. Time: Expressed in GMT followed by the letter "Z" (or other time zone description required by the fishery) and a confirmation code (2 digit sum of 4 digit time).

E. Latitude: To the nearest minute (4 digits) followed by the letter "N" and confirmation code (2 digit sum of 4 digit latitude number).

F. Longitude: To the nearest minute (4 or 5 digits) followed by the letter "E" or "W"

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(as appropriate for longitude) and confirmation code (2 digit sum of digits in longitude).

G. Area Codes: See Appendix C.

H. Species Codes: See Appendix D.

I. Product: Fish or fisheries product expressed in metric tons (to at least the nearest tenth or hundredth of a metric ton, as appropriate).

J. Fishery Product Code: From Appendix E, followed by a confirmation code (2 digit sum of the digits in the Species Code (if appropriate to the product) and the digits in the Product).

K. The general format of messages appears as follows (CC means confirmation code):

From: (FFV name, IRCS)
To: (Coast Guard Commander, City, State)
(NMFS Region, City, State)

VESREP

(FFV name)/(IRCS)/(DATE)D(CC)/(TIME)Z(CC)/(LATITUDE)N(CC)/(LONGITUDE) (E or W) (CC)/(AREA CODE)/(ACTION CODE)//

L. The general format for a report concerning Product would appear as follows (CC means confirmation code).

(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)//(SPECIES CODE)/(PRODUCT) (PRODUCT CODE) (CC)// etc.

2. *BEGIN report.* Begin reports must be delivered to the appropriate Coast Guard commander no later than 24 hours before fishing.

Example: The stern trawler NAVIS, LTUX, will begin fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude, in the Yakutat fishing area (code 64) of the Gulf of Alaska. There are 105.5 metric tons of headed and gutted (use product code HG from Appendix E to this subpart) Alaska pollock (use species code 701 from Appendix D to this subpart), 53.0 metric tons headed and gutted (code HG) Pacific cod (code 702) and 35.0 metric tons of fish meal (code M) on board. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/14230W10/BEGIN//
PRODUCT ABOARD/701/105.5HG19//702/53.0HG17//35.0M08//

If no product was aboard the PRODUCT ABOARD line could be omitted.

3. *DEPART report.* Depart reports must be transmitted before departure and delivered within 24 hours of transmittal.

Example: The stern trawler NAVIS, LTUX, will depart the FCZ at position 45°15′ N. latitude, 124°20′ W. longitude on July 11 at 1800 GMT in the Columbia fishing area (code 71) in the Northeast Pacific Ocean, to make a port call. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0711D09/1800Z09/4515N15/12420W09/71/DEPART//

4. *RETURN report.* Return reports must be transmitted before the returning to the grounds and delivered within 24 hours of transmittal.

Example. The stern trawler NAVIS, LTUX, will return from a port call to the FCZ on July 14 at 2230 GMT at position 44°45′ N. latitude, 124°33′ W. longitude in the Columbia area (code 71). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0714D12/2230Z07/4445N17/12433W13/71/RETURN//

5. *SHIFT report.* Shift reports must be transmitted before leaving the original fishing area and delivered within 24 hours of transmittal. If an FFV is fishing within 20 nautical miles either side of a boundary the message must be transmitted before the last shift in fishing areas expected for that day, include all the day's shifts, and be delivered within 24 hours of its transmittal.

A. Example of standard SHIFT report. The longline vessel CABLE, EXRC, fishing in the Atlantic billfish and sharks fishery is shifting areas to Atlantic area 16. The vessel will begin fishing in area 16 on December 3 at 1000 GMT at position 36°35′ N. latitude, 73°25′ W. longitude. The required message would be transmitted as follows:

From: F/V CABLE, EXRC
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

CABLE/EXRC/1203D06/1000Z01/3635N17/7325W17/16/SHIFT//

BLE

B. Example of SHIFT report when the FFV fishes on a boundary. The stern trawler NAVIS, LTUX, is fishing in area 22 in the Northwest Atlantic Ocean fishery. The vessel will begin fishing in area 23 on October 15 at 1115 GMT at position 39 01' N. latitude, 73 10' W. longitude. At 1720 GMT the vessel again SHIFTS to area 22 at position 38 59' N. latitude, 73 07' W. longitude. The vessel will remain within 20 nautical miles of the boundary. The required report would be transmitted as follows before the last EXPECTED SHIFT of the day:

From: F/V NAVIS, LTUX
To: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK
NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS

VESREP

NAVIS/LTUX/1015D07/1115Z08/3901N13/7310W11/23/SHIFT//
NAVIS/LTUX/1015D07/1720Z10/3859N25/7307W17/22/SHIFT//

6. *JV OPS reports.* Reports of starting or ending joint venture receipts and operations must be transmitted before the event and delivered within 24 hours of their transmittal. They are in addition to the requirements of other activity reports.

Example: The stern trawler NAVIS, LTUX, will begin joint venture receipts or processing on July 9, 1983, at 1320 GMT at position 43 40' N. latitude, 124 30' W. longitude in the Columbia area (code 71). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA
NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON

VESREP

NAVIS/LTUX/0709D16/1320Z06/4340N11/12430W10/71/START JV OPS//

7. *TRANSFER reports.* Transfer reports must be transmitted prior to the transfer and delivered within 24 hours of transmittal.

Example: The refrigerated transport vessel SOPOV, LJUJ, will conduct a transfer with the stern trawler NAVIS, LTUX, on July 22 at 1900 GMT in position 58 30' N. latitude, 175 10' W. longitude in Bering Sea area 52 (code 52). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0722D11/1900Z10/5830N16/17510W14/52//
TRANSFER/NAVIS/LTUX//

8. *OFFLOADED report.* Offloaded-to reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the FCZ and within 24 hours of transmittal.

Example. The stern trawler NAVIS, LTUX, completed transfer operations with the refrigerated transport vessel SOPOV, LJUJ, at 0900 GMT on July 24 at position 58 30' N. latitude, 175 10' W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.10 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0724D13/0900Z09/5830N16/17510W14/52//
OFFLOADED TO/SOPOV/LJUJ//
701/130.10HG13//702/15.75HG27//701/5.63R22//5.10M06//

9. *RECEIVED report.* Received-from reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV ceases fishing in the FCZ and within 24 hours of transmittal. More than one operation may be reported in one report, provided the above time constraints are met for all operations.

Example: The refrigerated transport vessel SOPOV, LJUJ, completed transfer operations with the stern trawler, NAVIS, LTUX, at 0900 GMT on July 24 at position 58 30' N. latitude, 175 10' W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.00 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

SOPOV/LJUJ/0724D13/0900Z09/5830N16/
17510W14/52//
Received from/NAVIS/LTUX//
701/130.00HG12//702/15.75HG22/701/
5.63R19//5.1M06//

10. *CEASE report.* Cease reports must be delivered 24 hours before ceasing fishing and departing the FCZ.

Example: The stern trawler NAVIS, LTUX, will cease fishing on July 8 at 1215 GMT at position 57°30′ N. latitude, 168°30′ W. longitude in Bering Sea Area 51 (code 51.) The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA.
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0708D15/1215Z09/5730N15/
16830W18/51/CEASE//

11. *CHANGE report.* Change reports must be transmitted and delivered as though they were the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska. Bad weather delayed arrival on the fishing grounds until 1800 GMT on March 12. Since the delay is longer than four hours, a CHANGE report must be sent. Because the message is considered as though it were an original BEGIN report the message must be delivered 24 hours in advance, or before 1800 GMT on March 11. The required message would be transmitted as follows:

From: F/V NAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA.
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CHANGE/NAVIS/LTUX/0311D05/
1320Z06/TO//

NAVIS/LTUX/0312D06/1800Z09/5930N17/
14230W10/64/BEGIN//

12. *CANCEL report.* Cancel reports must be transmitted and delivered prior to the time and date of the event in the original message.

Example: The stern trawler NAVIS, LTUX, was to have begun fishing on March 11 at 1320 GMT at position 59°30′ N. latitude, 142°30′ W. longitude in the Yakutat fishing area of the Gulf of Alaska and had sent the appropriate BEGIN message. The vessel has had mechanical problems and must return home before entering the FCZ. The required CANCEL message would be transmitted as follows:

From: F/VNAVIS, LTUX
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA.
ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

CANCEL/NAVIS/LTUX/0311D05/
1320Z06/BEGIN//

13. *Group reports.* A fleet commander or other authorized person may send in reports for several vessels. An FFV operator submitting a report on behalf of another FFV is assumed to have the authorization to do so.

Example: The refrigerated transport vessel SOPOV, LJUJ, with a fleet commander on board, wishes to report for three stern trawlers in the fleet. The stern trawler NAVIS, LTUX, will begin fishing at 59°30′ N. latitude, 142°30′ W. longitude, in Yakutat fishing area (code 64) on March 11 at 1320 GMT. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58°05′ N. latitude, 149°50′ W. longitude in the Kodiak fishing area (code 63) on March 12 at 1200 GMT to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40′ N. latitude, 157°15′ W. longitude in the Chirikof fishing area (code 62) on March 13 at 0800 GMT to return to its home port. The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA

VESREP

NAVIS/LTUX/0311D05/1320Z06/5930N17/
14230W10/64/BEGIN//
FISKVOL/LBEV/0312D06/1200Z03/
5805N18/14950W19/63/DEPART//
ALEXANDROV/LXDV/0313D07/0800Z08/
5440N13/15715W19/62/CEASE//

Since the illustrated group report contains notice of the beginning of fishing at 1320 GMT on March 11, the message must be delivered to the 17th Coast Guard District Commander not later than 1320 GMT, March 10.

APPENDIX C TO SUBPART A—FISHING AREAS

A. Northwest Atlantic Ocean and Hake Fisheries (Figures 1a and 1b.)

1. For the purposes of § 611.4(c) of this part, fishing areas in the Northwest Atlantic are the areas shown in Figure 1a and described below.

Area code, name, and description

21. Atlantic Area 21, Atlantic FCZ between 35°00′ N. latitude and 37°00′ N. latitude

22. Atlantic Area 22, Atlantic FCZ between 37°00′ N. latitude and 39°00′ N. latitude

23. Atlantic Area 23, Atlantic FCZ north of 39°00′ N. latitude and west of 71°[illegible] W. longitude

24. Atlantic Area 24, Atlantic FCZ enclosed by a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Shore	71°40′ W.
2	39°00′ N.	71°40′ W.
3	39°00′ N.	70°00′ W.
4	Cape Cod	70°00′ W.

25. Atlantic Area 25, Atlantic FCZ between 39°00′ N. latitude and 42°20′ N. latitude and east of 70°00′ W. longitude

26. Atlantic Area 26, Atlantic FCZ north and west of Cape Code and a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Cape Cod	70°00′ W.
2	42°20′ N.	70°00′ W.
3	42°20′ N.	The eastward limit of the EEZ

2. For the purposes of § 611.4(f) and § 611.9, fishing areas in the Northwest Atlantic are the NMFS "Three digit statistical areas" described in Figure 2b.

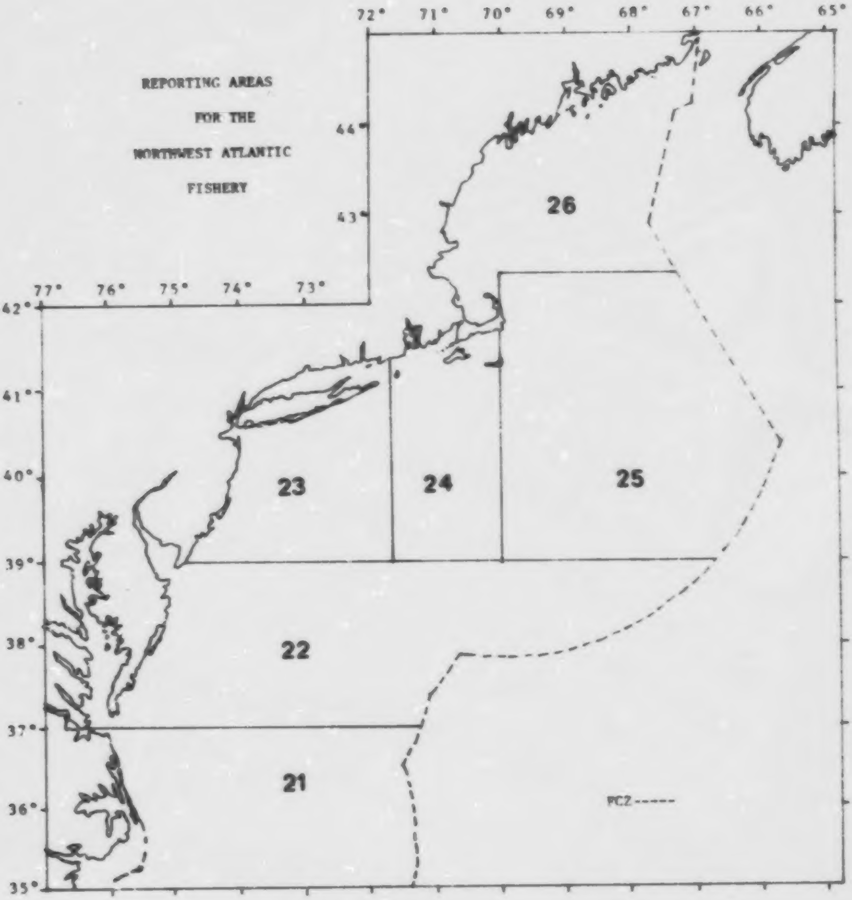
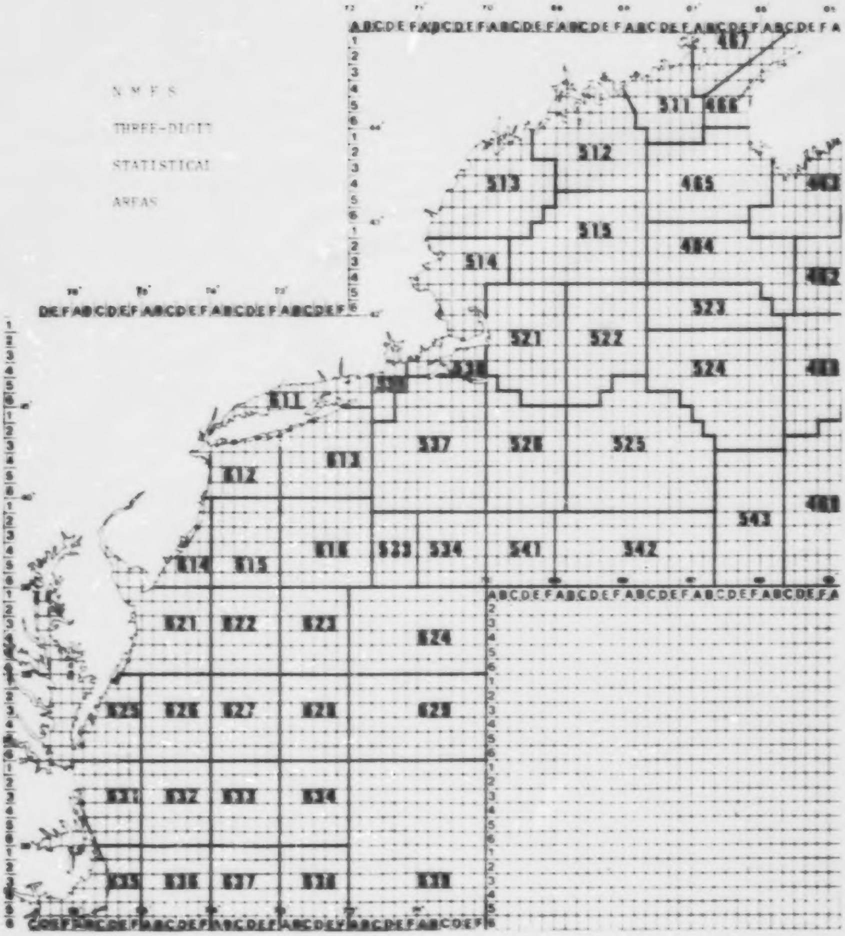

REPORTING AREAS
FOR THE
NORTHWEST ATLANTIC
FISHERY
72°
71°
70°
69°
68°
67°
66°
65°
44°
43°
77°
76°
75°
74°
73°
42°
41°
40°
39°
38°
37°
36°
35°
26
25
24
23
22
21
FCZ-----

Figure 1a. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(c) (Activity Reports).


N M F S
THREE-DIGIT
STATISTICAL
AREAS
467
466
511
512
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521
522
524
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611
537
526
525
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541
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639

Figure 1b. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(f) (Weekly reports) and 50 CFR 611.9 (Recordkeeping).

B. Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries (Figure 2.)

Area code, Name and description

11, Caribbean Area 11, Virgin Islands. The FCZ off Puerto Rico and the U.S

12, Gulf of Mexico, Area 12. The FCZ in the Gulf of Mexico west of 93°00′ W. longitude

13, Gulf of Mexico, Area 13, The FCZ in the Gulf of Mexico east of 93°00′ W. longitude and west of 88°00′ W. longitude

14, Gulf of Mexico, Area 14. The FCZ in the Gulf of Mexico east of of 88°00′ W. longitude and FCZ in the Atlantic Ocean south of 25°18′ N. latitude

15, Atlantic Area 15. The FCZ in the Atlantic Ocean north of 25°18′ N. latitude and south of 36°30′ N. latitude

16, Atlantic Area 16. The FCZ in the Atlantic Ocean north of 36°30′ N. latitude and south of 41°00′ N. latitude

17, Atlantic Area 17. The FCZ in the Atlantic Ocean north of 41°00′ N. latitude

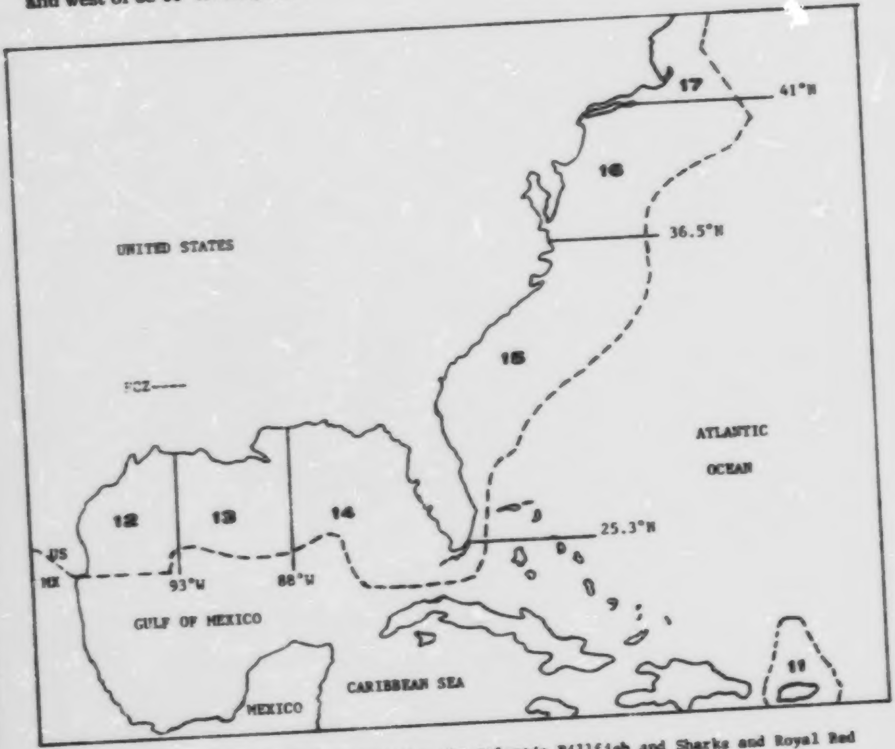

17
41°N
16
36.5°N
UNITED STATES
15
FCZ----
ATLANTIC
OCEAN
12
13
14
25.3°N
US
MX
93°W
88°W
GULF OF MEXICO
CARIBBEAN SEA
MEXICO
11

Figure 2. to Appendix C: Fishing Areas for the Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries.

C. Pacific Coast Groundfish and Pacific Billfish and Sharks Fisheries (Figure 3.)

Area code, name and description

67, Vancouver. The FCZ of the North Pacific Ocean off Washington north of 47°30′ N. latitude

71, Columbia. The FCZ of the North Pacific Ocean off Washington and Oregon south of 47°30′ N. latitude and north of 43°00′ N. latitude

72, Eureka. The FCZ of the North Pacific Ocean off Oregon and California south of 43°00′ N. latitude and north of 40°30′ N. latitude

73, Monterey. The FCZ of the North Pacific Ocean off California south of 40°30′ N. latitude and north of 36°00′ N. latitude

74, Conception. The FCZ of the North Pacific Ocean off California south of 36°00′ N. latitude

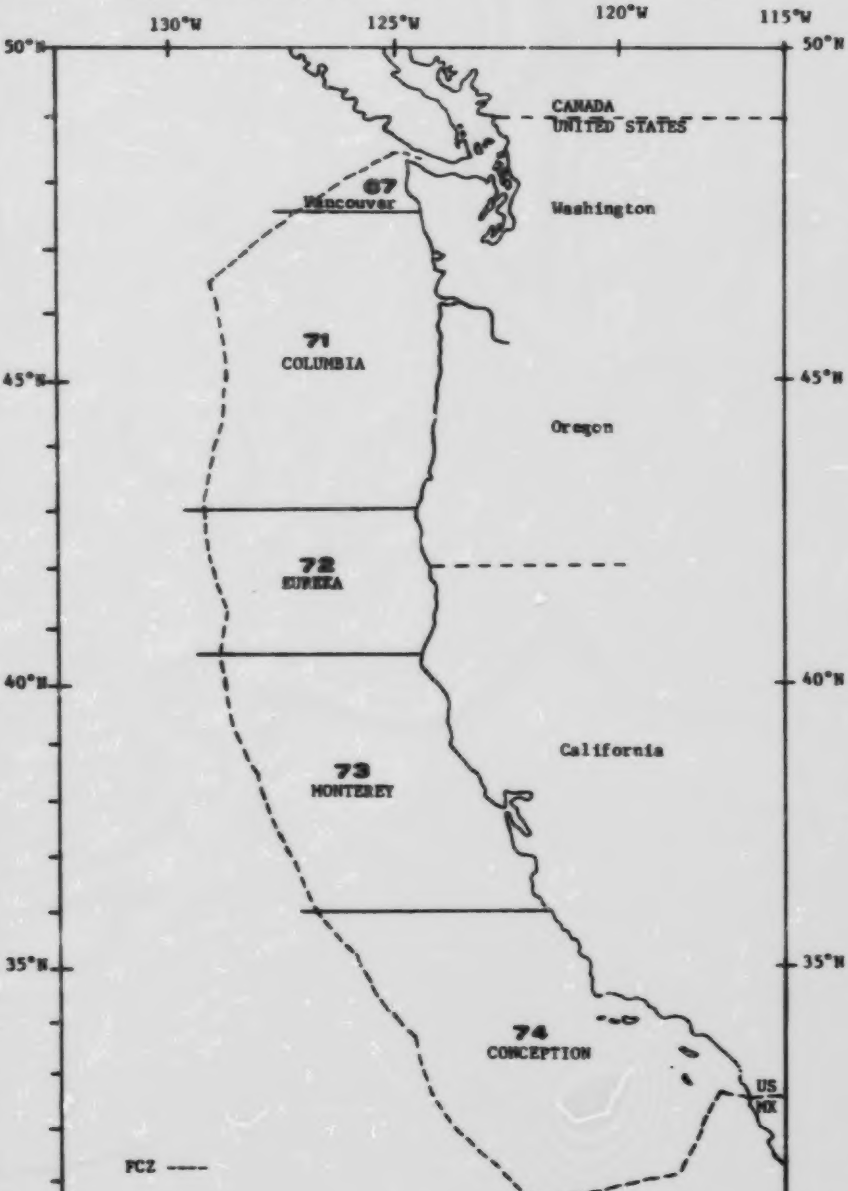

130°W
125°W
120°W
115°W
50°N
45°N
40°N
35°N
30°N
CANADA
UNITED STATES
67
Vancouver
Washington
71
COLUMBIA
Oregon
72
EUREKA
California
73
MONTEREY
74
CONCEPTION
US
MX
FCZ ----

Figure 3. to Appendix C: Fishing Areas for the Pacific Coast Groundfish and the Pacific Billfish and Sharks Fisheries.

D. Seamount Groundfish, Pacific Billfish and Sharks, and Precious Coral Fisheries

Area code, name, and description

81, Hawaii and Midway Islands. The FCZ at the Pacific Ocean off the Hawaiian and Midway Islands

82, Guam and Northern Mariana Islands. The FCZ of the Western Pacific Ocean off Guam and the Northern Mariana Islands

83, American Samoa. The FCZ of the South Pacific Ocean off American Samoa

84, Johnston Atoll. The FCZ off Johnston Atoll

85, Howland and Baker Islands. The FCZ of the Pacific Ocean off Howland and Baker Islands

86, Kingman Reef and Palmyra Atoll. The FCZ of the North Pacific Ocean off Kingman Reef and Palmyra Atoll

87, Jarvis Island. The FCZ of the Pacific Ocean off Jarvis Island.

88, Wake Island. The FCZ of the North Pacific Ocean off Wake Island

E. Gulf of Alaska Groundfish Fishery (Figure 4.)

Area Code, name and description

61, Shumagin. The FCZ of the Gulf of Alaska east of 170°00 W. longitude and west of 159°00' W. longitude

62, Chirikof. The FCZ of the Gulf of Alaska east of 159°00 W. longitude and west of 154°00 W. longitude

63, Kodiak. The FCZ of the Gulf of Alaska east of 154°00 W. longitude and west of 147°00 W. longitude

64, Yakutat. The FCZ of the Gulf of Alaska east of 147°00 W. longitude and west of 137°00 W. longitude

65, Southeastern. The FCZ of the Gulf of Alaska east of 137°00' W. longitude and north of 54°30 N. latitude

66, Charlotte. The FCZ of the North Pacific Ocean off Alaska south of 54°30 N. latitude

F. Bering Sea and Aleutian Islands Groundfish and Snail Fisheries (Figure 4.)

Area code, name and description

50, Bering Sea Area 50. For the purposes of § 611.4(c) only, and for the period September 1 through April 30 GMT, an area described by rhumb lines connecting the following points in the order listed

Point No	Latitude	Longitude
1	58°00' N	175°00' W
2	58°00' N	172°00' W
3	59°30' N	172°00' W
4	59°30' N	175°00' W
5	58°00' N	175°00' W

51, Bering Sea Area 51. The FCZ of the Bering Sea north of the Aleutian Islands and east of 170°00' W. longitude

52, Bering Sea Area 52. The FCZ of the Bering Sea north of the 55°00' N. latitude, east of 180° longitude and west of 170°00' W. longitude.

53, Bering Sea Area 53. The FCZ of the Bering Sea north of the 55°00' N. latitude, east of the U.S.-Russian convention line of 1867, and west of 170°00' W. longitude

54, Bering Sea Area 54. The FCZ of the Bering Sea and North Pacific Ocean off Alaska south of 55°00' N. latitude, east of the U.S.-Russian Convention Line of 1867 and west of 170°00' W. longitude

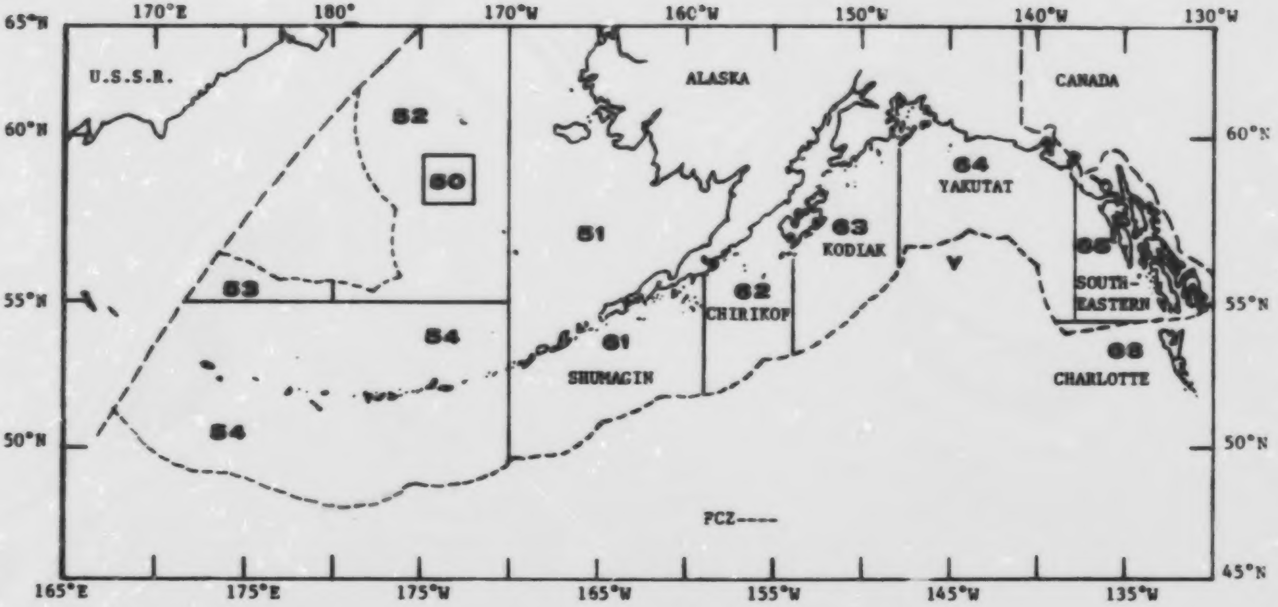

65°N
60°N
55°N
50°N
45°N
170°E
180°
170°W
160°W
150°W
140°W
130°W
165°E
175°E
175°W
165°W
155°W
145°W
135°W
U.S.S.R.
ALASKA
CANADA
52
60
51
53
54
54
61
SHUMAGIN
62
CHIRIKOF
63
KODIAK
64
YAKUTAT
65
SOUTH-
EASTERN
68
CHARLOTTE
V
FCZ----

Figure 4. to Appendix C: Fishing Areas for the Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, and Snail Fisheries.

APPENDIX D TO SUBPART A—SPECIES CODES

Code	Common name [1]	Scientific name
	A. Atlantic Ocean and Gulf of Mexico Fishes	
	Finfish	
101	Cod, Atlantic	*Gadus morhua.*
102	Haddock	*Melanogrammus aeglefinus.*
103	Redfish	*Sebastes marinus.*
104	Hake, silver	*Merluccius bilinearis.*
105	Hake, red	*Urophycis chuss.*
106	Pollock	*Pollachius virens.*
116	Flounder, yellowtail	*Limanda ferruginea.*
176	Scup	*Stenotomus chrysops.*
182	Tilefish	*Lopholatilus chamaeleonticeps.*
202	Herring, Atlantic	*Harengus harengus.*
204	Mackerel, Atlantic	*Scomber scombrus.*
206	Great barracuda	*Sphyraena barracuda.*
212	Butterfish	*Peprilus triacanthus.*
216	Menhaden, Atlantic	*Brevoortia tyrannus.*
226	Bluefish	*Pomatomus saltatrix.*
237	Pompano dolphin	*Coryphaena equisetis.*
238	Dolphin (mahimahi)	*Coryphaena hippurus.*
240	Mackerel, king	*Scomberomorus cavalla.*
252	Sailfish	*Istiophorus platypterus.*
254	Longbill spearfish	*Tetrapturus pfluegeri.*
255	Wahoo	*Acanthocybium solanderi.*
256	Marlin, white	*Tetrapturus albidus.*
260	Marlin, blue	*Makaira nigricans.*
264	Swordfish	*Xiphias gladius.*
309	Herring, river (includes alewife, blueback herring, and hickory shad).	*Alosa pseudoharengus, Alosa aestivalis,* and *Alosa mediocris.*
310	Shad, American	*Alosa sapidissima.*
314	Croaker, Atlantic	*Micropogonias undulatus.*
318	Salmon, Atlantic	*Salmo salar.*
332	Bass, black sea	*Centropristis striata.*
401	Striped bass	*Morone saxatilis.*
414	Spot	*Leiostomus xanthurus.*
418	Weakfish	*Cynoscion regalis.*
482	Porbeagle shark	*Lamna nasus.*
483	Longfin mako shark	*Isurus paucus.*
484	Shortfin mako shark	*Isurus oxyrinchus.*
485	Blue shark	*Prionace glauca.*
489	Sharks (NS)	Squaliformes.
499	Finfishes (NS) (includes dogfish and non-allocated squid).	Osteichthyes, squalidae, and sepioid and teuthoid squids.
	Invertebrates	
502	Squid, long-finned	*Loligo pealei.*
504	Squid, short-finned	*Illex illecebrosus.*
509	Squid (NS) (See code 499—other finfish).	Sepioid and teuthoid squids.
619	Crabs, marine (NS)	
622	Lobster, northern	*Homarus americanus.*
630	Royal red shrimp	*Hymenopenaeus robustus.*
687	Shrimp (NS)	
699	Invertebrates, marine (NS).	
	B. Pacific Ocean Fishes	
	Finfish	
129	Flatfishes (NS)	Pleuronectiformes.
200	Pelagic Armorhead	*Pentaceros richardsoni.*
201	Alfonsin	*Beryx splendens.*
207	Atka mackerel	*Pleurogrammus monopterygius.*
208	Jack mackerel	*Trachurus symmetricus.*
209	Pacific herring	*Clupea harengus pallasi.*
210	Salmonids (NS)	Salmonidae.
237	Pompano dolphin (mahimahi).	*Coryphaena equisetis.*
238	Dolphin (mahimahi)	*Coryphaena hippurus.*
252	Sailfish	*Istiophorus platypterus.*
253	Black marlin	*Makaira indica.*
255	Wahoo	*Acanthocybium solanderi.*
260	Marlin, blue	*Makaira nigricans.*
261	Striped marlin	*Tetrapturus audax.*
262	Shortbill spearfish	*Tetrapturus angustirostris.*
263	Requiem sharks (NS)	Carcharhinidae.
264	Broadbill swordfish	*Xiphias gladius.*
265	Thresher sharks (NS)	Alopiidae.
266	Mackerel sharks (NS)	Lamnidae.
267	Hammerhead sharks (NS).	Sphyrnidae.
489	Sharks (NS)	Squaliformes.
499	Other species (NS)	See Subparts E, F, and G.
500	Non-specified species (NS).	See Subpart G.
701	Pollock (walleye, Alaska)	*Theragra chalcogramma.*
702	Pacific cod	*Gadus macrocephalus.*
703	Sablefish (black cod)	*Anoplopoma fimbria.*
704	Pacific whiting (hake)	*Merluccius productus.*
720	Yellowfin sole	*Limanda aspera.*
722	Pacific halibut	*Hippoglossus stenolepis.*
737	Turbot (includes arrowtooth flounder, Greenland halibut and Kamchatka flounder).	(*Atheresthes stomias, Reinhardtius hippoglossoides,* and *Atheresthes evermanni*).
780	Pacific ocean perch [2]	*Sebastes alutus.*
800	Shortbelly rockfish	*Sebastes jordani.*
804	Idiot rockfish	*Sebastolobus spp.*
849	Rockfish (NS)	Scorpaenidae.
	Invertebrates	
505	Korean horsehair crab	*Erimacrus isenbeckii.*
507	Lyre crab	*Hyas lyratus.*
509	Squid (NS)	Sepioid and teuthoid squids.
527	Black coral (NS)	*Antipathes spp.*
529	Clams (NS)	
538	Scallops (NS)	Pectinidae.
673	Snail (NS)	Gastropoda.
675	King crab	*Paralithodes spp.*
676	Tanner crab (NS) (Snow)	*Chionoecetes spp.*
682	Corals (NS)	
690	Dungeness crab	*Cancer magister.*
697	Shrimp (NS)	
	C. Marine Mammals	
915	Whale, beluga	*Delphinapterus leucas.*
930	Whale, false killer	*Pseudorca crassidens.*
934	Dolphin, rough-toothed	*Steno bredanensis.*
936	Dolphin, Atlantic white-sided	*Lagenorhynchus acutus.*

Code	Common name [1]	Scientific name
938	Dolphin, Pacific white-sided.	*Lagenorhynchus obliquidens.*
940	Dolphin, common	*Delphinus delphis.*
941	Dolphin, bottlenosed	*Tursiops truncatus.*
942	Dolphin, Risso's (grampus).	*Grampus griseus.*
943	Dolphin, spotted	*Stenella attenuata.*
944	Dolphin, spinner	*Stenella longirostis.*
946	Dolphin, northern right-whale.	*Lissodelphis borealis.*
947	Porpoise, harbor	*Phocoena phocoena.*
949	Porpoise, Dall's	*Phocoenoides dalli.*
955	Sea lion, northern	*Eumetopias jubatus.*
956	Sea lion, California	*Zalophus californianus.*
958	Seal, northern fur	*Callorhinus ursinus.*
966	Walrus	*Odobenus rosmarus.*
967	Seal, harbor	*Phoca vitulina.*
973	Seal, ribbon	*Phoca fasciata.*
976	Seal, gray	*Halichoerus grypus.*
981	Seal, northern elephant	*Mirounga angustirostris*
986	Sea otter	*Enhydra lutris.*
992	Whale, pilot (NS)	*Globicephala* spp.
993	Whale, baleen (NS)	Mysticeti.
994	Whale, toothed (NS)	Odontoceti.
995	Seal (NS)	Other Phocidae.
996	Sea lion (NS)	Otariidae.
998	Porpoise (NS)	Other Phocoenidae.
999	Dolphin (NS)	Delphinidae.

D. Other Species

069	Sea turtle (NS)	

---

[1] (NS) means non-specific as to species. This code must be used for all species of the species group unless a more specific code exists.

[2] Pacific ocean perch in the Alaska fisheries (Subpart G) includes the additional species of red rockfish—

Northern rockfish (*sebastes polyspinas*), Rougheye rockfish (*Sebastes aleutianus*), Shortraker rockfish (*Sebastes borealis*), and Sharpchin rockfish (*Sebastes zacentrus*).

APPENDIX E TO SUBPART A—FISHERY PRODUCT CODES

Fishery product	Code
Canned meat	CN
Fillets, with skin/two per fish	F
Fillets, without skin/two per fish	FN
Fillet, one-piece (butterfly) with skin	FB
Fillet, one-piece (butterfly), without skin	FBN
Fish meal	M
Fish oil	FO
Flounder steaks—diagonal cut from midsection of fish.	S
Flounder pieces—punched or stamped from midsection of fish.	ST
Gutted only	G
Gutted and gilled	GG
Headed only	H
Headed and gutted	HG
Headed, gutted, and tails removed	HGT
Heads, separate from remainder of fish	HDS
Intestinal organs separate from remainder of fish	IO
Other product (specify)	O
Otoshimi: Frozen minced fish product (Japan)	OS
Pectoral collars separate from remainder of fish	P
Roe separate from remainder of fish	R
Skate wings	SW
Squid or octopus, beak removed	BSO
Squid or octopus mantles	MSO
Squid or octopus tentacles	TSO
Surimi: Frozen minced fish product (Japan)	SU
Tara Shinku: Frozen minced fish product (Japan)	TS
Tucza: heads, guts, fins, tail, and portions of belly flap removed (Poland).	TU
Whole fish	W

APPENDIX F TO SUBPART A—WEEKLY CATCH REPORT

A. Report Form Entries

1. Page numbering: Number each page in sequence and the total number of pages in each submission. For example, the pages of a report for the catches of three vessels would be numbered "Page 1 of 3", Page 2 of 3", and "Page 3 of 3."

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters.

3. IRCS: Enter the vessel's international radio call sign, up to eight characters.

4. Permit number: Enter the current permit number (without hyphens).

5. Week ending date: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours GMT (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, GMT (except during the last week of each year when it ends on December 31). Following month/day figure, insert the letter "D" and a confirmation code (2 digit sum of the 4 digits in month/day figure).

For example, for the report period ending on Saturday, April 9, 1983, enter: 0409D13.

6. Area code: Enter the code from Appendix C to this subpart, for each area in which the vessel fished during the reporting period.

7. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area duing the reporting period.

8. Species: Enter the code from Appendix D to this subpart for each allocated species caught during the reporting period and the code for each prohibited species caught as required by the fishery in which the FFV is engaged (see Subparts C through G of this part).

9. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt) by species and area of allocated species caught or received from catching vessels during the reporting period, regardless of whether retained or discarded, and the catch of prohibited species as required by the fishery in

which the FFV is engaged (see Subparts C through G of this part). Entries containing catch weights of fish used for human consumption or used for fish meal (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries containing catch weights of discarded fish (disposition "D") must be based on the most accurate method available, either scale round weights, estimated deck weights, or number, as required by the fishery. Following the catch figure, insert the letter "D" and a confirmation code (2 digit sum of the digits in the species code and catch figure).

10. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

11. Date: Enter the date the report is submitted to the NMFS by the designated representative.

B. Telex Reports

1. To ensure receipt of the Weekly Catch Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code-CC)//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//
Area/Days fished//
Species/(Catch)P(CC)//Species/(Catch)P(CC)//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT-83-0001-A, entered the fishery conservation zone on Sunday, March 13, 1983, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 15, and continued fishing in that area the morning of March 16. The afternoon of March 16 the vessel shifted to the Kodiak area (code 63), began fishing that evening, and continued fishing through Saturday, March 19, 1983. (Note that March 16 counts as a day fished in *both* area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and 0.4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP

NAVIS/LTUX/LT830001A/0319D13//
64/2//
701/121.6P18//780/17.8P31//207/8.0P17//
63/4//
701/23.4P17//780/23.7P27//207/86.4P27//
703/0.4P14//

3. The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY CATCH REPORT

Page _____ of _____

VESSEL NAME

/ /

PERMIT NUMBER **IRCS** **WEEK ENDING MONTH/DAY**

/ /

AREA	DAYS	SPECIES CODES												
CODES	FISHED													

DESIGNATED REPRESENTATIVE ____________________ DATE ____________

Figure 1. to Appendix F

APPENDIX G TO SUBPART A—WEEKLY JOINT VENTURE RECEIPTS REPORT

A. Report From Entries

1. Page numbering, vessel name, IRCS, permit number, week ending date, area code, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F paragraphs A. 1-6, 10 and 11.

2. Vessels delivering (V): Enter the number of U.S. vessels which transferred codends in each area during the reporting period.

3. Codends received (T): Enter the number of codends received from U.S. vessels which were caught in that area.

4. Species: Enter the code from Appendix D to this subpart of each authorized or prohibited species or species group received during the reporting period.

5. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt), by species and area, of species received from vessels of the U.S. during the reporting period and as required by the regulations of the fishery in which the FFV is engaged (see Subparts C through G of this part). After the amount, enter the letter "P" to indicate the final disposition of the receipts as: processed, frozen, eaten by the crew, or otherwise used for human consumption (disposition C), whether or not part of the catch went to fishmeal or oil; used for fishmeal (disposition M); or discarded (disposition D). Enter the letter "R" to indicate the receipts which were subsequently returned to the U.S. vessel (disposition R), when allowed by the fishery in which the FFV is engaged. Entries containing receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for discards or returns (disposition "D" or "R") must be based on the most accurate method available to the vessel, either scale round weight, estimated deck weight, or number, as required by the fishery. After the code letter, enter a confirmation code (2 digit sum of the digits in species code and amounts received figure).

6. Participating vessels: Enter the names of U.S. vessels transferring codends to the FFV during the reporting period.

B. Telex Reports

1. To ensure receipt of the Weekly Joint Venture Receipts Report on time, Telex reports may be used. If a Telex report is submited, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Joint Venture Receipt Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/(Week ending date)D(confirmation code)//Area//
Species/(Amount received) (Disposition "P" or "R") (confirmation code)/Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//Area//
Species/(Amount received) (Disposition) (confirmation code)//Species/(Amount received) (Disposition) (confirmation code)//etc.//
Number of vessels transferring codends//Codends transferred//
Name of participating vessel//Name of participating vessel//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, operating under permit number LT-83-0001-A which authorizes the receipt of U.S. harvested Alaska pollock and other associated species in the Bering Sea and Aleutian Islands groundfish fishery, received 26 codends from the U.S. vessesl LUCKY, MARY J, EMILY J, and LINDA C in the Bering Sea area 52 from June 5 through June 8, 1983, containing the following species and amounts: Alaska pollock (code 701), 156.3 mt; rockfishes (code 849), 0.2 mt; Pacific cod (code 702), 27.0 mt; turbot (code 737), 5.0 mt; and other species (code 499 4.9 mt. The codends also contained 25 salmon, a prohibited species required to be logged by number in the Bering Sea and Aleutian Islands groundfish fishery (see § 611.92). On June 8, NAVIS shifted its area of operations and received 20 codends from the U.S. vessels, MARY J, EMILY J, and LINDA C in Bering Sea area 54 from June 8 through June 11. NAVIS received the following species and amounts: Alaska pollock (code 701), 75.4 mt; rockfishes (code 849), 3.1 mt; Pacific cod (code 702), 30.2 mt; turbot (code 737), 7.5 mt; and other species (code 499), 7.1 mt. The codends contained 15 salmon and 20 halibut, both prohibited species required to be logged by number in the fishery.

2. The text of the Telex report would appear as follows:

RECREP

NAVIS/LTUX/LT830001A/061D08//
52/4//
701/156.3P23//849/0.2P23//702/27.0P18//737.5.0P22//499/4.9P35//

210/25P10//V4//T26//
54/4//
701/75.4P24//849/3.1P25//702/30.2P14//
737/7.5P20//499/7.1P30//
210/15P10//722/20P13//V3//T20//
LUCKY//MARY J//EMILY J//LINDA C//

The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY JOINT VENTURE RECEIPTS REPORT

Page_____of_____

VESSEL NAME

/ /

PERMIT NUMBER / / / / / / / / / /

IRCS / / / / / / /

WEEK ENDING MONTH/DAY / / / / /

AREA CODE	DAYS FISH REC'D	VSLS DEL'D	CODENDS REC'D	SPECIES CODES								

PARTICIPATING VESSELS

______________	______________	______________
______________	______________	______________
______________	______________	______________
______________	______________	______________

DESIGNATED REPRESENTATIVE ____________________ DATE ____________

Figure 1. to Appendix G

APPENDIX H TO SUBPART A—WEEKLY MARINE MAMMAL REPORT

A. Report Form Entries

1. Page numbering, vessel name, IRCS, permit number, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix F, paragraphs A, 1-4, 10, and 11.

2. For each mammal caught enter—

a. Date caught. Enter the month and day e.g., for May 6, 1983, enter: 0506;

b. Latitude and longitude to the nearest degree;

c. Species code from Appendix D to this subpart;

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured; and

e. Number of mammals caught where two or more of the same species and status were caught together.

f. Flag or nation of registry of vessel that caught the marine mammal.

B. Telex Reports

1. To ensure receipt of the Weekly Marine Mammal Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Marine Mammal Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number//
Date/Latitude/Longitude/Species/
Condition/Number caught/Flag of vessel catching mammal//
Date/Latitude/Longitude/Species/
Condition/Number caught/Flag of vessel catching mammal//

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT-83-0001-A, began fishing in the Bering Sea Area 52 on April 27, 1983. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10′ N. latitude, 171°25′ W. longitude. One was killed during retrieval of the trawl and the other was uninjured. On May 17, at 56°35′ N. latitude, 171°40′ W. longitude, a northern sea lion (code 955) was injured during capture by a U.S. vessel delivering its catch to the NAVIS.

2. The text of the Telex report would appear as follows:

MAMREP

NAVIS/LTUX/LT830001A//
0515/56N/171W/967/1/1/LT//
0515/56N/171W/967/4/1/LT//
0517/57N/172W/955/2/1/US//

3. The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

WEEKLY MARINE MAMMAL REPORT

Page____of____

VESSEL NAME

/ /

PERMIT NUMBER / / / / / / / / / / /

IRCS / / / / / / / /

MONTH/DAY / / / / /

CONDITION CODES

1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD BEFORE CAPTURE (DECOMPOSED)
4. UNINJURED

RECORD THE CATCH OF INDIVIDUAL ANIMALS UNLESS TWO OR MORE WERE TAKEN TOGETHER AND WERE IN THE SAME CONDITION

DATE (MM/DD)	LATITUDE (DEGREES)	LONGITUDE (DEGREE)	SPECIES CODE	STATUS CODE	NUMBER	FLAG

DESIGNATED REPRESENTATIVE ____________________ DATE __________

Figure 1. to Appendix H

APPENDIX I TO SUBPART A—DAILY FISHING LOG

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Format entries

1. Section One—Effort (to be completed within 2 hours after the beginning of the day or 2 hours after the hauling time, as appropriate):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign or other vessel identification as required by 50 CFR 611.5(a)(2).

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude to the nearest 0.1 of a minute) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Trawl or set number: Enter consecutive numbers for each trawl or set made, beginning with the first trawl or set completed in the current calendar year.

(i) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where each trawl or set was completed.

(j) Gear type: Enter the abbreviation for type of gear used as described below.

Gear type	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear)	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps or Pots	FIX
Danish seine	DS
Miscellaneous gears (other than above)	MLS

(k) Set time: Enter the time based on GMT at which each set or trawl began. For trawls, this is the time of the net first reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessls, this is the time the first section of gear is placed in the water.

(l) Set position: Enter the geographic coordinates (latitude/longitude) where each trawl or set began. For trawls, this is the position at which the net reaches the fishing level and the winches stop paying out cable. For longline, pot, and gillnet vessels, this is the position where the first section of gear is placed in the water.

(m) Course of set: Enter the vessel's course (degrees true) at the set time at which each trawl or set began.

(n) Sea depth: Enter the average sea depth in meters.

(o) Depth of set: Enter the average depth in meters at which the gear was set or towed.

(p) Duration of set: Enter the elapsed time in minutes from the set time to the hauling time of each set or trawl.

(q) Hauling time: Enter the ending time based on GMT when each trawl or set was hauled. For trawls this is the time the net begins to be hauled up. For longline, pot, and gillnet vessels, this is the time that retrieval of the gear is complete.

(r) Hauling position: Enter the geographic coordinates (latitude/longitude) at which the set or trawl was hauled. For trawls this is the position at which the net begins to be hauled up. For longline, pot, and gillnet vessels this is the position of the last section or end of the gear.

(s) No. of pots or longline units: For longline or gillnet vessels only, enter the number of longline or gillnet units (specify the length in fathoms per unit). For pot vessels only, enter the number of pots set.

(t) No. of hooks per longline unit: For longline vessels only, enter the average number of hooks per unit of groundline.

(u) Trawl speed: For trawlers only, enter the average speed to the nearest tenth of a knot at which the gear was towed.

(v) Net mesh size: Enter the millimeter mesh size of the cod end (trawlers) or gillnet (measured when wet after stretching, from the inside of one knot to the inside of the opposing knot).

(w) Estimated haul weight: Enter the estimated total weight of the catch for the trawl or set to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the end of the trawl or set or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(b) Set/trawl number: Enter the number corresponding with sets or trawls listed in Section One.

(c) Catch: Enter the catch by species and by trawl or set, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(d) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal; enter under "M" the weight of whole fish which are processed for fishmeal or oil; and enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species discarded from each set or trawl as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals caught (if more than one of the same species and condition), and condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily fishing log form is illustrated below.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY FISHING LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	US PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION FORCE	WEATHER	BARO METER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER OR OPERATOR

TRAWL OR SET NO	FISHING AREA NO	GEAR TYPE	SET TIME (GMT)	SET POSITION	COURSE OF SET	SEA DEPTH (METERS)	DEPTH OF SET (METERS)	DURATION OF SET (MINUTES)	HAULING TIME (GMT)	HAULING POSITION	NO OF POTS OR LONGLINE UNITS	NO OF HOOKS PER LONGLINE UNIT	TRAWL SPEED	TRAWL MESH SIZE COD END	

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1a. to Appendix I: Daily Fishing Log

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES / VESSEL															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE
												TOTAL CATCH									
												DAILY TOTAL	CUM TOTAL								
DAILY DISPOSITION C																					
[illegible]																					
[illegible]																					
AREA TOTAL																					
DAILY TOTAL																					
CUMULATIVE TOTAL																					

SECTION THREE - PRODUCTION

	FROZEN PRODUCT																	
SPECIES / PRODUCT																		TOTAL FROZEN PRODUCT
PRR %																		
DAILY TOTAL																		
CUMULATIVE TOTAL																		
AMOUNT TRANSFERRED																		
BALANCE																		

MEAL AND OIL		
	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFERRED		
BALANCE		

Figure 1b. to Appendix I: Daily Fishing Log

APPENDIX J TO SUBPART A—DAILY CONSOLIDATED LOG

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing operations. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section One—Effort (to be completed within 2 hours of the beginning of the day):

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

2. Section Two—Catch (to be completed within 12 hours after the end of the day):

(a) Vessel/IRCS: Enter the name of the foreign catching vessel transferring codends to the foreign processing vessel and its IRCS or other required vessel identification.

(b) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(c) Fishing area: Enter the fishing area, using the code from Appendix C to this subpart, where the fish were caught. If a catching vessel catches fish in more than one area, a separate line entry must be made for each area.

(d) Catch: Enter the catch by species of each catching vessel in that area during the day, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(e) Daily disposition: For each species, specify the daily disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(f) Area total: Enter the total daily catch by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(g) Daily total: Enter the total daily catch by species, to at least the nearest 0.1 mt round weight.

(h) Cumulative total: Enter the cumulative total catch by species, to at least the nearest 0.1 mt round weight.

(i) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(j) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of prohibited species received from each harvesting vessel as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(k) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), condition code (1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of catch product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the *fishing vessel*) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

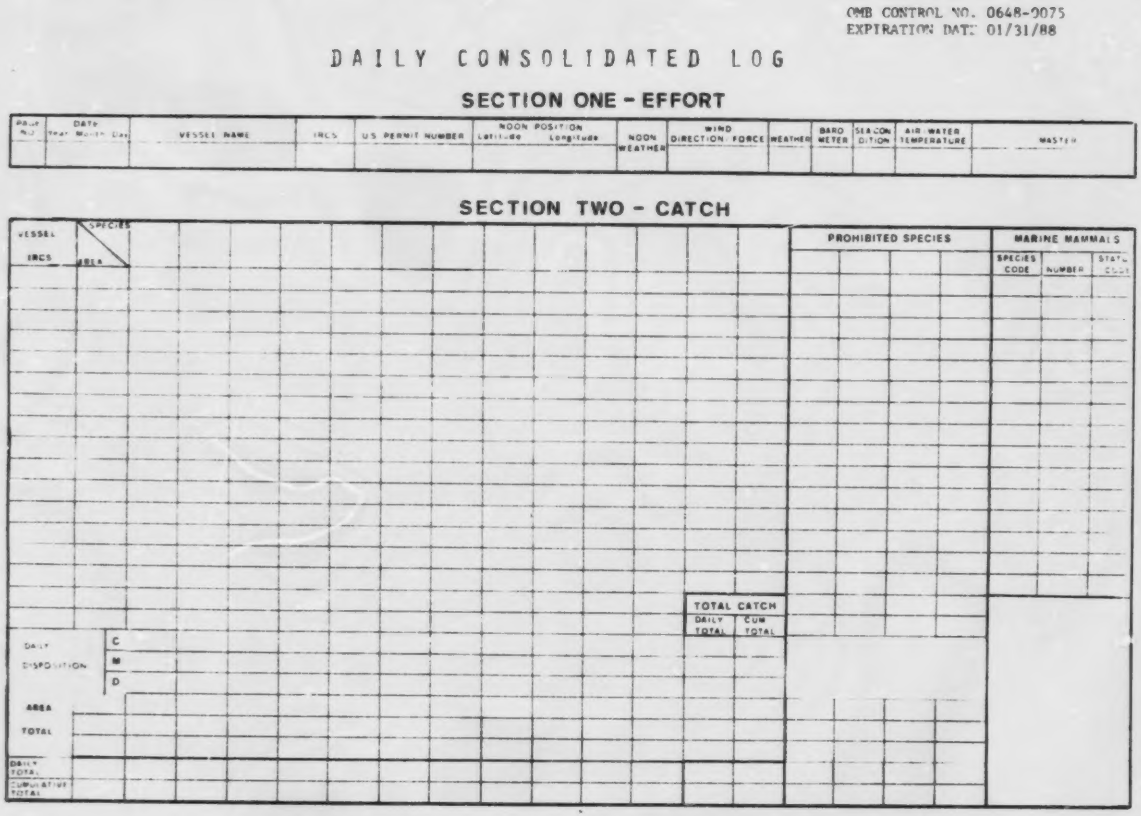
(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily consolidated log form is illustrated below:

BLANK PAGE

BLANK PAGE

BLANK PAGE



OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY CONSOLIDATED LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	US PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION FORCE	WEATHER	BARO METER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER

SECTION TWO - CATCH

VESSEL
IRCS
SPECIES
AREA
PROHIBITED SPECIES
MARINE MAMMALS
SPECIES CODE
NUMBER
STATUS CODE
TOTAL CATCH
DAILY TOTAL
CUM TOTAL
DAILY DISPOSITION
C
M
D
AREA TOTAL
DAILY TOTAL
CUMULATIVE TOTAL

Figure 1a. to Appendix J: Daily Consolidated Log.

OMB CONTROL NO. 0648-0075
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SECTION THREE - PRODUCTION

FROZEN PRODUCT																		
SPECIES PRODUCT																		TOTAL FROZEN PRODUCT
PRR'S																		
DAILY TOTAL																		
CUMULATIVE TOTAL																		
AMOUNT TRANSFERRED																		
BALANCE																		

MEAL AND OIL		
	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFERRED		
BALANCE		

U.S. INSPECTION	REMARKS:
OFFICER:	
DATE:	

Figure 1b. to Appendix J: Daily Consolidated Log.

APPENDIX K TO SUBPART A—DAILY JOINT VENTURE LOG

A. Format

1. The log must contain entries for each day of fishing. Each page of the log may contain entries pertaining to only one day's fishing.

2. Each day's entries must be divided into three sections. The sections are not required to be on the same page of the log. There may be more or fewer lines and columns in each section to accommodate fishing operations and factory production. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section one—Effort (to be completed within 2 hours after the beginning of the day or within 2 hours after the receipt time, as appropriate);

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master or operator's signature and title.

(h) Codend No.: Enter consecutive numbers for each codend received, beginning with the first codend received in the current calendar year.

(i) Vessel: Enter the name of the U.S. fishing vessel the codend was received from.

(j) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where the codend was received.

(k) Receipt time: Enter the time based on GMT when the codend was received.

(l) Receipt position: Enter the geographic coordinates (latitude/longitude) where the codend was received.

(m) Codend weight: Enter the estimated total weight of the codends to at least the nearest metric ton round weight.

2. Section Two—Catch (to be completed within 12 hours after the codend was received or within 12 hours after the end of the day, as appropriate):

(a) Species: Enter the species code for each species received which the FFV is authorized to retain, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart. Use another column for the same species if there is more than one disposition of the receipt. (See paragraph (d) below).

(b) Codend No.: Enter the number corresponding with the receipts listed in Section One.

(c) Catch: Enter the receipts in each codend by species, disposition, and receipt, to at least the nearest tenth of a metric ton (0.1 mt) round weight. Disposition is indicated by adding a letter code as described in paragraph (f) below. Enter zero (0) if there was no catch of a listed species.

(d) Daily Disposition: For each species, specify the disposition to at least the nearest 0.1 mt as follows: Enter under "C" the round weight of the fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of fish which are discarded; and enter "R" for the round weight of fish returned to the U.S. vessel, if allowed in the fishery. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Area total: Enter the total daily receipts by species in each fishing area in which the fish were caught, to at least the nearest 0.1 mt round weight.

(f) Daily total: Enter the total daily receipts by species, to at least the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total receipts by species, to at least the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R) and each fishing area.

(2) Cumulative total: Enter the cumulative total for all species to at least the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to at least the nearest 0.1 mt of all prohibited species received from each harvesting vessel, as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals received (if more than one of the same species and condition), and condition code (1—killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured) for each incident and harvesting vessel.

3. Section Three—Production (to be completed within 12 hours after the end of the day):

(a) Species: Enter the species code from Appendix D to this subpart for each authorized species which the FFV receives.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the daily product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to at least the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to at least the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to at least the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to at least the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

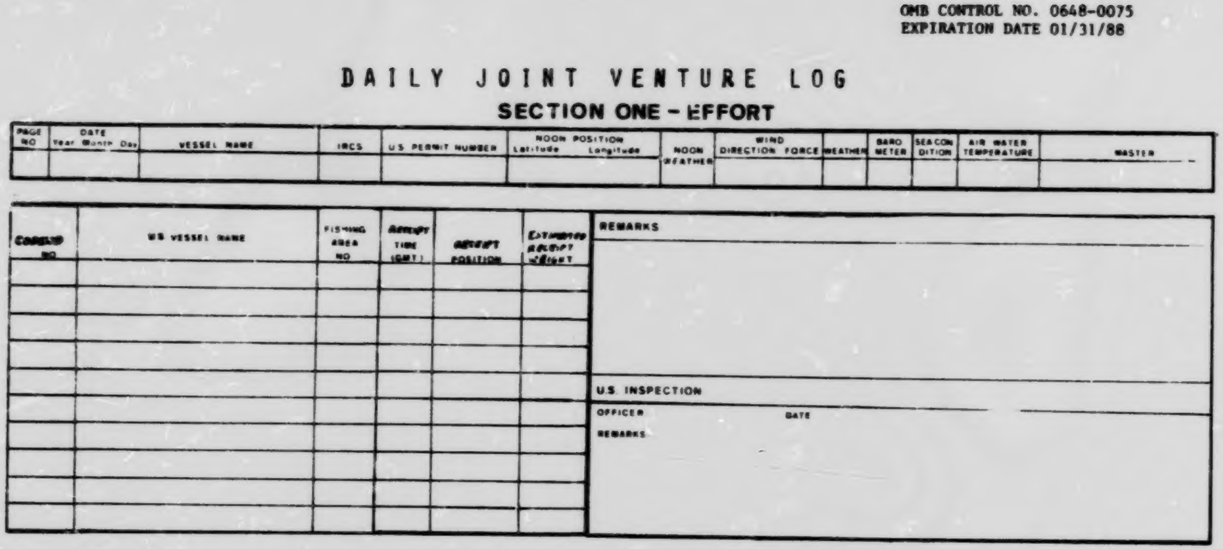
(1) Daily total: Enter the daily total produced to at least the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to at least the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to at least the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to at least the nearest 0.01 mt.

(j) A daily joint venture log form is illustrated below:



OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

DAILY JOINT VENTURE LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U S PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION FORCE	WEATHER	BARO METER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER

CODEND NO	US VESSEL NAME	FISHING AREA NO	RECEIPT TIME (GMT)	RECEIPT POSITION	ESTIMATED RECEIPT WEIGHT

REMARKS

U.S. INSPECTION

OFFICER DATE

REMARKS

Figure 1a to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION TWO - CATCH

SPECIES CODEND NO.															PROHIBITED SPECIES				MARINE MAMMALS		
																			SPECIES CODE	NUMBER	STATUS CODE
													TOTAL CATCH								
													DAILY TOTAL	CUM TOTAL							
DAILY DISPOSITION C																					
M																					
D																					
R																					
AREA TOTAL																					
DAILY TOTAL																					
CUMULATIVE TOTAL																					

Figure 1b. to Appendix K: Daily Joint Venture Log.

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 01/31/88

SECTION THREE - PRODUCTION

FROZEN PRODUCT																		
SPECIES PRODUCT																		TOTAL FROZEN PRODUCT
PRR %																		
DAILY TOTAL																		
CUMULATIVE TOTAL																		
AMOUNT TRANSFERRED																		
BALANCE																		

MEAL AND OIL		
	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFERRED		
BALANCE		

Figure 1c. to Appendix K: Daily Joint Venture Log.

Subpart B—Surpluses

Source: 50 FR 35022, Aug. 28, 1985, unless otherwise noted.

Effective Date Note: At 50 FR 35022, Aug. 28, 1985, §§ 611.20 through 611.22 (Subpart B) were revised, effective October 28, 1985. For the convenience of the user, the text remaining in effect until October 28, 1985, follows the text of this Part 611.

§ 611.20 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield (OY) of such fishery which will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published as a notice in the Federal Register. Adjustments to those numbers will be published as notices in the Federal Register upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Fisheries Management, F/M1, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

§ 611.21 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 611.22 Fee schedule.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $101 per vessel, plus the surcharge, if required under paragraph (c) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to Division Chief, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Room 414, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which payment is made.

(b) *Poundage fees*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (c) of this section.

Species and Poundage Fee

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
Atlantic and Gulf Fisheries	
1. Butterfish	160
2. Hake, red	96
3. Hake, silver	102
4. Herring, river	46
5. Mackerel, Atlantic	49
6. Other finfish, Atlantic	69
7. Squid, *Illex*	57
8. Squid, *Loligo*	114
9. Atlantic Shark	110
10. Shrimp, royal red	([1])
Alaska Fisheries	
11. Pollock, Alaska	32
12. Cod, Pacific	73
13. Pacific ocean perch	100
14. Other rockfish (Alaska)	94
15. Mackerel, Atka	52
16. Squid, Pacific	59
17. Flatfish, Gulf of Alaska and Bering Sea and Aleutian Islands	34
18. Sablefish, Gulf of Alaska	159
Bering Sea and Aleutian Islands	64
19. Other species	39
20. Snails	66
Pacific Fisheries	
21. Whiting, Pacific	32
22. Sablefish	143
23. Pacific ocean perch	124
24. Other rockfish	119
25. Flounders	155
26. Mackerel, jack	55

SPECIES AND POUNDAGE FEE—Continued

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
27. Other species	154
Western Pacific Fisheries	
28. Coral	[2] 53
29. Seamount groundfish	103
30. Dolphin fish	1,428
31. Wahoo	571
32. Sharks, Pacific	286
33. Striped marlin	428
34. Pacific billfish	514
35. Pacific swordfish	514

[1] Reserved.

[2] Dollars per kilogram.

(2) *Method of payment of poundage fees, surcharges and observer fees.* If a nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges and observer fees required by paragraphs (c) and (d) of this section. The L/C must—

(i) Be irrevocable;

(ii) Be with a bank subscribing to ICC Pub. 290;

(iii) Designate "Department of Commerce, NOAA" as beneficiary;

(iv) Allow partial withdrawals; and

(v) Be confirmed by a U.S. bank.

The customer must pay all commissions, Telex, and service charges. No fishing will be allowed until the letter of credit is established, and authorized written notice of its issuance is provided to the Assistant Administrator at the address in paragraph (a) of this section.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of §611.13(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1985 fees.

(d) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a letter of credit as prescribed in § 611.22(b)(2). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(e) *Financial assurances.* A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Secretary to provide financial assurances. Such assurances may be required if—

(1) Civil and criminal penalties assessed against fishing vessels of the nation have not effectively deterred violations;

(2) Vessels of that nation have engaged in fishing in the FCZ without proper authorization to conduct such activities;

(3) The nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(4) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. government.

Subpart C—Atlantic Ocean

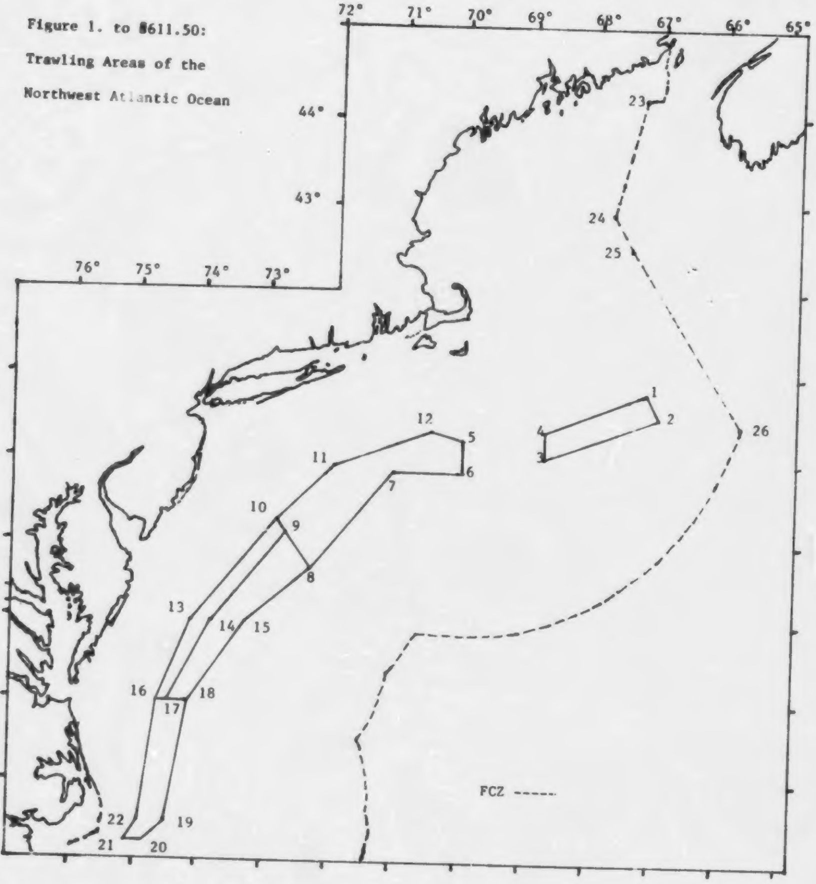
§ 611.50 Northwest Atlantic Ocean fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement within the fishery conservation zone in the Atlantic Ocean north of 35°00'N. latitude, except for the longline fishery which is regulated under § 611.60.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Activities allowed.* (i) Vessels subject to this action which fish with trawl gear may fish only within the trawling areas, during the seasons, and with the methods specified in Figure 1 and Table 1 of this section. Vessels subject to this action which fish with any other gear need not comply with the area, season, or method limitations specified in Figure 1 or Table 1 of this section.

(ii) Fishing, including processing, scouting and support of foreign or U.S. vessels is prohibited north and east of a line beginning at the shore at 44°22' N. latitude, 67°52' W. longitude and intersecting the boundary of the FCZ at 44°11'12" N. latitude, 67°16'46" W. longitude.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69°
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FCZ -----

Figure 1. to §611.50: Trawling Areas of the Northwest Atlantic Ocean

1. 40°47′ N., 67°11′ W.
2. 40°30′ N., 67°00′ W.
3. 40°01′ N., 68°45′ W.
4. 40°20′ N., 68°45′ W.
5. 40°13′ N., 70°00′ W.
6. 39°50′ N., 70°00′ W.
7. 39°50′ N., 71°05′ W.
8. 38°40′ N., 72°30′ W.
9. 39°07′ N., 72°44′ W.
10. 39°16′ N., 72°50′ W.
11. 39°56′ N., 72°00′ W.
12. 40°20′ N., 70°30′ W.
13. 38°00′ N., 74°10′ W.
14. 38°00′ N., 73°53′ W.
15. 38°00′ N., 73°20′ W.
16. 37°00′ N., 74°40′ W.
17. 37°00′ N., 74°30′ W.
18. 37°00′ N., 74°10′ W.
19. 35°30′ N., 74°30′ W.
20. 35°13′ N., 74°50′ W.
21. 35°13′ N., 75°06′ W.
22. 35°30′ N., 74°55′ W.
23. 44°11′12″ N., 67°16′46″ W.
24. 42°53′14″ N., 67°44′35″ W.
25. 42°31′08″ N., 67°28′05″ W.
26. 40°27′05″ N., 65°41′59″ W.

(3) *TALFF.* The TALFFs for the Northwest Atlantic Ocean fishery are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Director. The procedures for determining and adjusting the squid, mackerel, and butterfish TALFFs are set forth in 50 CFR Part 655.

(4) *Species definitions.* The category "other finfish" used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: silver hake, red hake, short-finned squid, long-finned squid, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish; and

(ii) The prohibited species, namely: American shad, Atlantic cod, Atlantic herring, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, pollock, scup, sea turtles, sharks (except dogfish), spot, striped bass, tilefish, yellowtail flounder, weakfish, Continental Shelf fishery resources, and other invertebrates (except non-allocated squids).

Table I. Fishing gear and season restrictions by fishing area.
Northwest Atlantic Ocean Fishery

Off-Bottom Gear Only

Area[1]	January	February	March	April	May	June	July	August	September	October	November	December
1										▨	▨	▨
2	▨	▨	▨			▨	▨	▨	▨[2]	▨	▨	▨
3	▨	▨	▨							▨	▨	▨
4								▨	▨	▨	▨	▨
5								▨	▨	▨	▨	▨

Bottom Gear and Off Bottom Gear

Area[1]	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
4	▨	▨	▨									
5	▨	▨	▨									

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month.

[1] Coordinates of the various areas are set forth in Figure 1 of this section.

[2] Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15.

▨ Denotes maximum open fishing season, subject to possible earlier closure for some of all nations in accordance with § 611.13.

(5) *Closures.* The taking of any species for which a nation has an allocation is permitted, provided that:

(i) The vessels of the foreign nation have not caught the allocation of that nation for any species or species group (e.g., "other finfish"). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing other than scouting, processing, or support by vessels of that nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 611.13.

(6) *Allocation utilization.* Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species which was caught. Prohibited species must always be returned to the sea as required under § 611.11.

(7) *Additional authorization.* For the purpose of gathering additional management information, the Regional Director may authorize limited foreign fishing in areas, during seasons, and using gear not otherwise authorized in this subpart. Special reporting requirements for such fishing may be specified by the Regional Director.

(c) *Gear restrictions.* (1) No foreign fishing vessel may use on the bottom a trawl net having, in any part of the net, meshes of less than 60 millimeters (inside measure when wet after use).

(2) No foreign fishing vessel may use any trawl net having, in any part of the net, meshes of less than 45 millimeters (inside measure when wet after use).

(3) Meshes are to be measured by a flat, wedge-shaped gauge having a taper of 2 centimeters in 8 centimeters and a thickness of 2.3 millimeters, inserted into meshes under a pressure or pull of 5 kilograms. The mesh size of a net shall be taken to be the average of the measurements of any series of twenty consecutive meshes, at least ten meshes from the lacings, and, when measured in the codend of the net, beginning at the after end and running parallel to the long axis.

(4) No foreign fishing vessel may use any device or method which would have the effect of reducing mesh size, except that:

(i) Chafing gear may be attached to the underside of the codend of bottom trawl nets. Chafing gear may not be attached to trawl nets having a mesh size of less than 60 millimeters.

(ii) Net strengtheners may be attached to the codend of trawl nets providing such net strengtheners consist of mesh material identical or similar to the material of the codend and have a mesh size of at least twice the minimum authorized mesh size.

(5) To qualify as off-bottom gear, a trawl net must:

(i) Be a truly pelagic trawl net, operated with neither the doors nor the net mouth in contact with the bottom; or

(ii) Be rigged so that the net mouth operates not less than 60 centimeters above the bottom. An otherwise standard bottom trawl net will be considered to meet this requirement if:

(A) It has attached perpendicular to the net mouth "hanging line" chains not shorter than 60 centimeters;

(B) Each chain hangs loose or is attached to steel bobbins; and

(C) No weights or other attachments are directly secured to the "hanging line" other than the chains specified in paragraph (c)(5)(ii)(A) of this section, or flotation devices.

(d) *Fixed gear avoidance.* (1) No foreign fishing vessel may trawl in any fixed-gear area broadcast by the Coast Guard (see § 611.12 and paragraph (d)(2) of this section). Broadcasts of fixed-gear areas will include a buffer zone around the actual reported locations of the fixed gear.

(2) The locations (latitude and longitude) of fixed-gear areas are broadcast at 1350 G.m.t. on the first day of each month by Coast Guard Communications Station Boston (NMF) on 472 kHz radiotelegraphy. Broadcast is made on 8502 kHz via simultaneous keying. The list of areas is updated each day at 1350 G.m.t. All broadcasts are numbered sequentially by month, day and year. A printed monthly sum-

mary of fixed-gear information is available from commander (Aol), Coast Guard Atlantic Area, Governors Island, New York, N.Y. 10004 (Telephone 212-668-7877), Telex 126831.

(e) *Collection, maintenance, and reporting of data.* In addition to the requirements of §§ 611.4 and 611.9, each foreign nation or foreign fishing vessel shall collect, maintain or report on a timely basis accurate data relating to fishing operations as specified below. The following logs or reports are required:

(1) *Fishing log.* The operator of each FFV which engages in fishing must maintain a record of all catches of allocated, authorized, or prohibited species to the nearest tenth of a metric ton (0.1 mt).

(2) *Quarterly scientific report.* (i) Each foreign nation whose vessels engage in fishing in the Northwest Atlantic Ocean Fishery shall submit not later than three months after the close of each quarter a quarterly scientific report (QSR) of the catch and effort of each such vessel to:

Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

Quarterly scientific reports shall be submitted for each vessel for each 30 minute latitude by 30 minute longitude area in which the vessel engaged in fishing, and for each gear type used by the vessel in a given 30 minute latitude by 30 minute longitude area, by semimonthly periods. Effort data must be submitted whether or not any catch was taken. The catch of each species taken, even, if discarded, must be shown in tenths of a metric ton (0.1 m.t.) (live round weight).

(ii) Quarterly scientific reports should be completed in accordance with the instructions in Appendix I and may be submitted in the format shown in Figure 1 to Appendix I or by magnetic tape, computer cards, or printouts. Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form.

Figure 1

QSR-1

Year/Quarter	Vessel Name	Permit Number	Vessel Size Code
Area Designation	Fishing Gear	Target Species/Codes	Page __ of __

EFFORT DATA

Semimonthly Period						
Effort by Standard Units						
Days on Grounds						
Days Fished						
Hours Fished						

CATCH DATA (live round weight in hundredths of a metric ton (0.01 m.t.))

Species Name	Species Code							Total by Species
Total by Semimonthly Period								Grand Total

A. *Report form entries.* See Figure 1 for report form.

1. Year/Quarter: Enter the year and quarter for which the report is prepared. For example: 1979/2 designates April, May, and June of 1979.

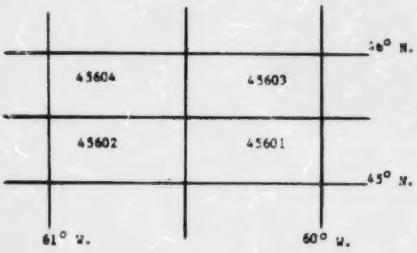
2. Vessel name: Enter the vessel name as shown on the vessel's permit.

3. Permit number: Enter the current permit number without hyphens.

4. Vessel size code: Enter the code number which indicates the vessel's tonnage (GRT) from the following list:

Tonnage (GRT)	Code number
0 to 24.9	1
25 to 49.9	2
50 to 149.9	3
150 to 499.9	4
500 to 999.9	5
1000 to 1999.9	6
2000 and over	7

5. Area designation: Enter the five digit code which indicates the latitude, longitude and quadrant of the 30 minute latitude by 30 minute longitude area for which the report is submitted. The first two digits of the code are determined from the latitude in degrees (disregarding minutes); the second two digits are determined by the longitude in degrees (disregarding minutes); and the fifth digit is determined from the quadrant within the one degree latitude by one degree longitude area as follows: southeast-1, southwest-2, northeast-3, and northwest-4. For example, the 30 minute latitude by 30 minute longitude areas 45601, 45602, 45603, and 45604 are shown in the following diagram:



A separate report is required for each area designation in which each vessel fishes.

6. Fishing gear: Enter the standard abbreviations from the following list for the fishing gear used in the area designated in item 5. A separate report is required for each fishing gear used in the area.

Gear category	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see §611.50(c)(5) for definition of this gear)	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps	FIX
Miscellaneous gears (other than above)	MLS

7. Target species/codes: Enter the common names and species codes (as listed in Appendix D to Subpart A) of the main species sought in the area designated during the period of the report.

8. Page numbering: Sequentially number each page and the total number of pages in the submission for each vessel. For example, if a stern trawler fished during the period of the report by bottom trawl in three different 30 minute latitude by 30 minute longitude areas and by off-bottom trawl in two of those same areas, the pages of that vessel's report would be numbered "page 1 of 5" through "page 5 of 5".

9. Semimonthly periods: Enter the designation for each semimonthly period of the quarter during which fishing effort was expended in the area designated and using the gear indicated. The designation is a three digit number consisting of the numerical equivalent of the month (01 for January through 12 for December) followed by the numeral 1 for days 1-15 of each month or the number 2 for days 16 through the end of the month. Thus, the semimonthly period June 16-30 would be designated 062 and the semimonthly period July 1-15 would be designated 071.

10. Effort by standard units: Whenever possible, enter the effort expended during each semimonthly period in the standard units shown below for the fishing gear indicated on the report.

Fishing gear	Standard effort units	Computation
Purse seines	No. of sets	Number of times the gear has been set or shot, whether or not a catch was made.

Fishing gear	Standard effort units	Computation
Trawls	No. of hours fished	Number of hours during which the trawl was in the water fishing.
Gillnets (set or drift)	No. of 100 meter net sets	Length of nets in meters divided by 100 multiplied by the number of sets made.
Gillnets (fixed)	No. of 100 meter net clearings	Length of nets in meters divided by 100 multiplied by the number of times the net was cleared.
Traps	Pot-days	Number of days pots are in the water and fishing multiplied by the number of pots hauled.
Longlines (set or drift)	Hook-days per thousand hooks.	Number of hooks fished divided by 1000 multiplied by number of days fished.

11. Days on grounds: Enter the number of days the vessel was on the fishing grounds. Any portion of a day on the grounds shall be counted as one day on the grounds.

12. Days fished: Enter the number of days the vessel fished. Any portion of a day fished shall be counted as one day fished.

13. Hours fished: Enter the number of hours fished to the nearest hour.

14. Species name: Enter the common names of each species caught in the area designated during the period of the report by the gear indicated. Attach additional sheets as necessary to include all species caught.

15. Species code: Enter the species code (as listed in Appendix I to § 611.9) corresponding to each species named.

16. Catch data: For each species, enter the live round weight to the nearest hundredth of a metric ton (0.01 m.t.) of fish caught, by semimonthly period. For quantities which are not retained, add the suffix "D" (for discarded) following the specific semimonthly catch figure for such discarded quantities.

17. Total during the semimonthly period: Enter the total of all species caught in the area and by the gear indicated during the semimonthly period.

18. Total by species: Enter the total for each species caught in the area and by the gear indicated.

19. Grand total: Enter the total fish caught in the area and by the gear indicated during the period of the report.

B. *Submission instructions.* Submission of the QSR by magnetic tape, computer cards, or printouts will be accepted in lieu of the report form shown in Figure 1. Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form. Questions regarding submission should be directed to:

Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543.

(Approved by the Office of Management and Budget under control number 0648-0075)

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 15727, Mar. 15, 1979; 44 FR 17184, Mar. 21, 1979; 44 FR 46286, Aug. 2, 1979; 45 FR 14046, Mar. 4, 1980; 47 FR 37555, Aug. 26, 1982; 48 FR 14556, Apr. 4, 1983; 48 FR 16891, Apr. 20, 1983; 48 FR 34762, Aug. 1, 1983; 49 FR 43679, Oct. 31, 1984; 50 FR 35023-35026, Aug. 28, 1985]

EFFECTIVE DATE NOTE: At 50 FR 35023-35025, Aug. 28, 1985, effective October 28, 1985, § 611.50 was amended by revising paragraph (b)(2)(i); by adding new Figure 1 following paragraph (b)(2)(ii); by removing the words "all billfish" from paragraph (b)(4)(ii) and adding the words "all marlin, all spearfish, sailfish, swordfish"; by removing from the parenthetical phrase in the second sentence of paragraph (b)(5)(i) the words "(as defined in § 611.12(r)(1))" and adding the words "other than scouting, processing, or support"; and removing paragraphs (e)(1) (i) through (ix). The introductory text of paragraph (e)(1) was also revised, effective January 1, 1986. For the convenience of the user, the superseded text is set forth below.

§ 611.50 Northeast Atlantic Ocean Fishery.

* * * * *

(b) * * *

(2) *Activities allowed.* (i) Vessels subject to this action which fish with trawl gear may fish only during the seasons and with the methods specified in Table I of this section. Vessels subject to this section which fish with any other gear need not comply with the limitations specified in Table I.

* * * * *

(e) * * *

(1) *Fishing log.* Each vessel which engages in fishing, as defined in § 611.2(r)(1), shall maintain a record of all catches during the period period. While no form is specified, this fishing log shall contain the following information on a set-by-set basis:

(i) Date;

(ii) Trawl number (number sets consecutively each day);

(iii) Times of commencement and completion of each set;

(iv) Vessel's positions in degrees and minutes of latitude and longitude at the times of commencement and completion of each set;

(v) Type of gear used;

(vi) Mesh size (inside measure when wet after use);

(vii) Quantity of total catch to the nearest tenth of a metric tone (0.1 m.t.);

(viii) Quantity of each species to the nearest tenth of a metric ton (0.1 m.t.) (use species codes from Appendix I to § 611.9);

(ix) Disposition of the catch, by species (human consumption (including fish consumed on board), fishmeal, or discarded).

* * * * *

§ 611.51 Hake fishery.

(a) *Definitions.* For purposes of this section (1) JVP means the estimated U.S. harvest of hakes in excess of the amount which can and will be utilized by U.S. fish processors; JVP may be available for transfer to foreign-flag processing vessels; and (2) DAP means the part of the estimated U.S. harvest of hake which can and will be utilized by U.S. fish processors.

(b) *Procedures to reassess DAP*—(1) *Preliminary reassessment.* (i) If a foreign fishing permit application is received for a joint venture and if the amount of U.S.-harvested hake requested by the applicant exceeds the amount of JVP that can be made available to the applicant, the Secretary will reassess DAP for hake to determine whether additional JVP may be made available.

(ii) The Secretary will consult with the New England and Mid-Atlantic Fishery Management Councils and consider the following factors in making the reassessment:

(A) U.S. catch and participation in the fishery to date;

(B) Projected U.S. catch and participation in the fishery for the remainder of the fishery year;

(C) U.S. processing performance to date; and

(D) Projected U.S. processing performance for the remainder of the fishing year.

(iii) The preliminary reassessment will be published in the FEDERAL REGISTER and a public comment period of 15 days will be provided.

(2) *Final reassessment.* The Secretary will make a final reassessment of DAP after taking into consideration all information received under paragraph (b)(1)(ii) of this section, and any additional relevent information that may become available. The final reassessment will be published in the FEDERAL REGISTER with the reasons for the determination.

(3) *Availability of data.* All data relevent to the reassessment will be available in aggregate form for public review at the Regional Director's office during the public comment period.

[49 FR 4213, Feb. 3, 1984]

Subpart D—Atlantic, Caribbean, and Gulf of Mexico

§ 611.60 General provisions.

(a) *Purpose and scope.* This subpart regulates:

(1) All foreign longline fishing conducted under a GIFA which involves catching, processing, or receipt of billfishes, sharks, or other fishes in the FCZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(2) All other foreign fishing conducted under a GIFA within the FCZ south of 35°00′ N. latitude in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(3) Regulations governing fishing for swordfish in the same geographical area by vessels of the United States are published as Part 630 of this chapter.

(4) The term *billfish* or *billfishes* as used in this subpart means all species of marlin, spearfish, sailfish and swordfish.

(b) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF.* The TALFFs are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Director.

(3) *Permitted fishing.* Foreign fishing authorized under this subpart may be conducted only during the seasons, in the open areas, and with the gear specified in §§ 611.61 and 611.62.

(c) *Prohibited species.* (1) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no applicable allocation are prohibited species and shall be treated in accordance with § 611.11. Fish caught in excess of an applicable national allocation are prohibited species.

(2) As a means of rebutting the presumption of § 611.11(d), a vessel may store all prohibited species caught outside the FCZ in a separate part of the hold that can be sealed, and may have its holds inspected and sealed before commencing fishing in the FCZ. Seals affixed during such inspection shall be maintained in an unbroken condition during the time the fishing vessel is in the FCZ. Such inspections may be obtained at Venice or New Orleans, La., Key West, Fla., Mayaguez, P.R., or Norfolk, Va., upon 48 hours advance notification to: Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33702 Telephone: 813-893-3141.

(3) Additional ports for hold inspection may be arranged with the Regional Director.

(4) The designation of ports for hold inspections does not modify the port entry arrangements or requirements (if any) of GIFAs or the notification requirements of any other laws or regulations of the United States.

(d) *Open area.* Except for the closed areas set forth in paragraph (e) of this section, § 611.61(b) and § 611.62(b), foreign fishing authorized under this subpart may be conducted in that portion of the FCZ in the Atlantic Ocean, Gulf of Mexico and Caribbean Sea beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea, and that portion of the FCZ south and west of a line connecting the shore at 44°22′ N. latitude, 67°52′ W. longitude and the outer boundary of the FCZ at 44°11′12″ N. latitude, 67°16′46″ W. longitude.

(e) *Closed area.* The area known as East and West Flower Garden Banks is closed to foreign fishing. The Flower Garden Banks are located in the Gulf of Mexico approximately 110 nautical miles southeast of Galveston, Texas, and 120 nautical miles south of Cameron, Louisiana. The area encloses a proposed national marine sanctuary, which consists of approximately 257 square nautical miles and comprises the waters overlaying and surrounding those banks to a distance of 4 nautical miles from the 100 meter isobath of each bank. The boundary of the closed area is described by rhumb lines connecting the following points:

Point	Latitude	Longitude
1	27°46.5′N	93°57.0′W.
2	27°56.0′N	93°57.0′W.
3	28°04.0′N	93°32.0′W.
4	27°51.0′N	93°28.0′W.
5	27°47.0′N	93°45.5′W.
6	27°46.5′N	93°57.0′W.

[46 FR 27493, May 20, 1981, as amended at 47 FR 44265, Oct. 7, 1982; 48 FR 1507, Jan. 13, 1983; 49 FR 43679, Oct. 31, 1984, 50 FR 33956, Aug. 22, 1985; 50 FR 35025, 35026, Aug. 28, 1985]

EFFECTIVE DATE NOTE: At 50 FR 33956, Aug. 22, 1985, § 611.60 was amended by adding paragraph (a)(3), effective September 18, 1985 through December 31, 1987.

At 50 FR 35025, Aug. 28, 1985, § 611.60 was further amended by adding paragraph (a)(4), effective October 28, 1985.

§ 611.61 Atlantic billfish and sharks fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of any species of billfish or sharks in the FCZ in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(b) *Area and seasons.* (1) Except as provided in paragraph (b)(2) of this section, foreign fishing under this section may be conducted throughout the year. Retention of sharks will terminate when the applicable national allocation has been reached. The closure provisions of § 611.13(a)(1) through (a)(3) do not apply to this section.

(2) From June 1 through November 30 foreign vessels fishing under this section for species other than sharks, and longline gear deployed from such vessels, are prohibited in the area defined by the following coordinates in the order listed:

Coordinate	Latitude	Longitude
	Shore at	
1	44°22'00" N	67°52'00" W.
2	44°11'12" N	67°16'46" W.
3	42°53'14" N	67°44'35" W.
4	42°31'08" N	67°28'05" W
5	40°55'00" N	66°09'00" W.
6	40°25'00" N	66°57'00" W.
7	40°00'00" N	67°39'30" W.
8	39°32'00" N	70°52'30" W.
9	37°54'00" N	73°05'00" W.
10	34°50'00" N	73°34'00" W.
11	34°50'00" N	shore.

(3) *Gulf of Mexico.* [Reserved]

(c) *Prohibited species.* Unless otherwise specifically instructed by a U.S. observer or Authorized Officer, and instead of following the procedures of § 611.11(b):

(1) No species may be released below the surface of the water;

(2) All prohibited species must be released regardless of the condition of the fish; and

(3) All billfishes and all prohibited sharks must be released at the surface of the water by cutting the line without removing the fish from the water.

(d) *Gear restrictions.* Foreign vessels participating in a directed fishery for sharks must use a minimum sized hook of 7 inches shank length and 2.5 inches gap (distance between tip and shank) when fishing inside the 100-fathom depth contour. There is no hook size restriction seaward of the 100-fathom depth contour.

(e) *Statistical reporting.* (1) In addition to the requirements of §§ 611.4 and 611.9, a vessel of a nation with an applicable allocation shall submit the following additional quarterly reports:

(i) Catch and effort data, summarized weekly by one degree squares, containing the following information:

(A) Number of hooks set.

(B) Number of sharks caught under allocation.

(C) Number of prohibited species (by species code from Appendix D to Subpart A) caught and released.

(D) Number of prohibited species (by species code) released alive.

(ii) Summary of vessel activities containing the following information:

(A) Permit number of each vessel fishing.

(B) For each successive day of the reporting period, the noon-day location (within 0.1 degree of latitude and longitude) of each vessel in the fishery.

(2) A vessel of a nation with no applicable allocation is exempt from the requirements of § 611.9(d) and § 611.4(f)(2), but shall provide the reports required by § 611.4 (f)(3) and (f)(4), when applicable. In addition, a vessel of a nation with no applicable allocation shall submit the quarterly reports described in paragraphs (e)(1)(i) (A), (C), and (D), only, and paragraph (e)(1)(ii) of this section.

(3) The quarterly reports required by paragraphs (e)(1) and (2) of this section shall be submitted not later than 60 days from the end of the quarter for which the report is being made, to: Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone: 305-361-5761.

(f) *Fixed gear avoidance.* (1) No foreign fishing vessel subject to this section may conduct longline fishing in any fixed-gear area broadcast by the Coast Guard (see § 611.12 and paragraph (f)(2) of this section). Broadcasts of fixed-gear areas will include a buffer zone around the actual reported locations of the fixed gear.

(2) The locations (latitude and longitude) of fixed-gear areas north of Cape Hatteras are broadcast at 1350 G.m.t. on the first day of each month by Coast Guard Communication Station Boston (NMF) on 472 kHz radiotelegraphy. The list of areas is updated each day at 1350 G.m.t. All broadcasts are numbered sequentially by month, day, and year. A printed monthly summary of fixed-gear information is available from:

Commander (Aol), Coast Guard Atlantic Area, Governors Island, New York, NY 10004. Telephone 212-668-7877; Telex 126831.

(The information collection requirements in paragraph (e) were approved by the Office of Management and Budget under control number 0648-0075)

[46 FR 27493, May 20, 1981, as amended at 47 FR 40441, Sept. 14, 1982; 48 FR 1507, Jan. 13, 1983; 48 FR 34762, Aug. 1, 1983; 48 FR 39077, Aug. 29, 1983; 49 FR 43679, Oct. 31, 1984; 50 FR 33956, Aug. 22, 1985; 50 FR 35025, 35026, Aug. 28, 1985]

EFFECTIVE DATE NOTE: At 50 FR 33956, Aug. 22, 1985, § 611.61 was amended by adding paragraph (b)(3), effective September 18, 1985 through December 31, 1987.

§ 611.62 Royal red shrimp fishery.

(a) *Purpose.* This section regulates all foreign fishing conducted under a GIFA which involves the catching of royal red shrimp in the FCZ of the Gulf of Mexico.

(b) *Closed areas.* Fishing by foreign vessels for royal red shrimp is prohibited in depths less than 100 fathoms.

(c) *Gear restrictions.* No foreign vessel may use gear other than trawl gear to fish for royal red shrimp, except as specifically authorized in writing by the Regional Director.

[46 FR 27493, May 20, 1981]

Subpart E—Northeast Pacific Ocean

§ 611.70 Pacific coast groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for groundfish conducted under a Governing International Fishery Agreement within the fishery conservation zone seaward of the States of Washington, Oregon, and California. For regulations governing fishing for groundfish in the same area by vessels of the United States, see Part 663 of this chapter.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) *Directed or target fishing* means fishing for the primary purpose of catching a particular species (the directed or target species).

(2) *Incidental catch* means groundfish species which are unavoidably caught during a directed fishery.

(3) *Joint venture processing* means processing by a foreign fishing vessel of U.S.-harvested groundfish species, whether directly or incidentally caught.

(4) *Prohibited species* means salmonids, Pacific halibut, and Dungeness crab.

(5) *Regional Director* means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115.

(6) *Secretary* means the Secretary of Commerce or the person(s) to whom appropriate authority has been delegated.

(c) *Authorized foreign fishing*—(1) *Amounts.* The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), incidental catch and retention allowance percentages, amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) and domestic annual processing (DAP) are published in the FEDERAL REGISTER prior to the beginning of each fishing season, and during the season if these amounts are modified, to reflect changes in resource condition and performance of the U.S. industry. Current TALFF and JVP amounts are available from the Regional Director.

(2) *Restriction on joint venture incidental retention allowance.* The incidental retention allowance percentages are published in the FEDERAL REGISTER to reflect changes in resource condition and performance of the U.S. industry. The allowance percentages apply to each 5000 metric tons (mt) of species with a JVP allowance received by vessels of a foreign nation from U.S. vessels. If the retained amount of an incidental species or species complex reaches the specified percentage, no further amount of that species or species complex may be retained until vessels of that nation have received a full 5,000 mt of the species with a JVP allowance.

(d) *Modifications to authorized foreign fishing*—(1) *Modifications.* The Secretary may establish or modify amounts of TALFF, JVP, and corresponding incidental catch and retention allowances during the season by publishing a notice in the FEDERAL REGISTER in accordance with this paragraph (d). The Secretary may publish season and area restrictions for any directed fishery for species other than Pacific whiting under the procedures of this paragraph (d).

(i) TALFF may be increased by any part of the reserve and initial estimated DAH for the species under consideration that the Secretary determines will not be harvested by U.S. fishermen during the remainder of the calendar year.

(ii) JVP may be increased by the amount of DAH for the species under consideration that the Secretary determines will not be processed by U.S. processors during the remainder of the fishing year.

(2) *Procedures to reassess DAH and DAP*—(i) *Preliminary reassessment.* On July 1, or as soon as practicable thereafter, the Secretary will reassess DAH and DAP for each species for which a numerical OY exists. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors in making the reassessments:

(A) U.S. catch and effort as of July 1;

(B) Projected U.S. catch and effort for the remainder of the fishing year;

(C) U.S. processing performance as of July 1; and

(D) Projected U.S. processing performance for the remainder of the fishing year.

The preliminary reassessments will be published in the FEDERAL REGISTER on or about July 1.

(ii) *Final reassessment.* On August 1, or as soon as practicable thereafter, the Secretary will make a final reassessment of DAH and DAP for each species for which a numerical OY exists. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (d)(2)(iv) of this section, all factors considered in making the preliminary reassessments under paragraph (d)(2)(i) of this section, and any additional relevant information. The final reassessment will be published in the FEDERAL REGISTER on or about August 1 with the reasons for the determinations.

(iii) *Availability of data.* All data relevant to the preliminary and final reassessments under paragraphs (d)(2)(i) and (d)(2)(ii) of this section will be available in aggregate form for public review at the Regional Director's office during the public comment period.

(iv) *Public comment.* Comments from the public that are relevant to preliminary and final reassessments in paragraphs (d)(2)(i) and (d)(2)(ii) of this section should be submitted to the Regional Director before August 1 or as stated in the FEDERAL REGISTER notice.

(3) *Procedures for other modifications*—(i) *Proposed modifications.* At any time during the calendar year, the Secretary may propose to modify the incidental catch or retention allowance percentages for any groundfish species or species complex. At any time the Secretary may propose to establish or modify seasons or areas for directed fisheries for species other than Pacific whiting. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors:

(A) Observed rates of incidental catches in previous foreign directed fishery or joint venture operations;

(B) Current estimates of the relative abundance and availability of species caught or received incidentally;

(C) Ability of the foreign fishery to attain TALFF or JVP;

(D) Past and projected foreign and U.S. fishing efforts;

(E) Status of the stock;

(F) Impact on domestic industry; and

(G) Other relevant scientific information.

Any proposed modification will be published in the FEDERAL REGISTER.

(ii) *Final modification.* Within thirty days following the publication of a proposal under paragraph (d)(3) of this section, or as soon as practicable thereafter, the Secretary may make a final decision. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (d)(3)(iv) of this section, all factors considered in making the proposal under paragraph (d)(3)(i) of this section, and any additional relevant information. Any final decision will be published in the FEDERAL REGISTER with the reasons for the modification.

(iii) *Availability of data.* Data relevant to the proposed and final decisions under paragraphs (d)(3)(i) and (d)(3)(ii) of this section will be available in aggregate form for public review at the Regional Director's office during the public comment period.

(iv) *Public comment.* Comments from the public that are relevant to proposed and final decisions in paragraphs (d)(3)(i) and (d)(3)(ii) of this section should be submitted to the Regional Director by the date specified in the relevant FEDERAL REGISTER notice.

(e) *Fishery closures*—(1) *General.* The catching, retention, or receipt of any species or species complex is prohibited after the applicable open season has ended or after the fishery has been closed under a regulation or notice of closure issued under this section or Part 663 (Regulations for the domestic Pacific Coast Groundfish Fishery).

(2) *Directed fishery.* Catching and retaining any species or species complex is prohibited after the vessels of a foreign nation have caught:

(i) That nation's allocation of TALFF; or

(ii) The maximum incidental catch allowance for that nation of any species or species complex.

(3) *Joint venture fishery.* (i) The receipt of any species of U.S.-harvested fish is prohibited after the maximum JVP amount has been received.

(ii) The retention of a species or species complex of U.S.-harvested fish having an incidental retention allowance is prohibited after the maximum incidental retention allowance for that species or species complex has been retained.

(f) *Seasons*—(1) *Directed fishery.* Directed foreign fishing authorized under this subpart may begin at 0701 G.M.T. (0001 Pacific Daylight Time) June 1 and will end not later than 0800 GMT on November 1 (2400 Pacific Standard Time on October 31), unless a different period of time is specified in a foreign fishing permit.

(2) *Joint venture fishery.* There is no season restriction unless specified in a foreign fishing permit or under § 611.70(d).

(g) *Closed areas*—(1) *Directed fishery.* No directed foreign fishing may be conducted:

(i) Shoreward of a line drawn twelve nautical miles from the baseline used to measure the U.S. territorial sea;

(ii) North of 47°30′ N. latitude;

(iii) South of 39°00′ N. latitude;

(iv) Within the "Columbia River Recreational Fishery Sanctuary"—that area between 46°00′ N. latitude and 47°00′ N. latitude and east of a line connecting the following coordinates in the order listed: 46°00′ N. latitude, 124°55′ W. longitude; 46°20′ N. latitude, 124°40′ W. longitude; and 47°00′ N. latitude, 125°20′ W. longitude; or

(v) Within the "Klamath River Pot Sanctuary"—that area between 41°20′ N. latitude and 41°37′ N. latitude and east of a line connecting the following coordinates in the order listed: 41°20′ N. latitude, 124°32′ W. longitude; and 41°37′ N. latitude, 124°34′ W. longitude.

(2) *Joint venture fishery.* Except as specified under § 663.24 or § 611.70(d), no U.S.-harvested fish may be received or processed south of 39°00′ N. latitude.

(h) *Gear restrictions—directed fishery.* (1) Except as authorized under paragraph (h)(2) of this section, gear other than a pelagic trawl with a minimum stretched mesh size of 100 mm, measured between the inside of one knot and the inside of the opposing knot when wet, is prohibited. Liners must not be used in the codend of the trawl. Devices or methods of gear use which have the effect of reducing the mesh size in the codend are prohibited. Fishing on the seabed is prohibited.

(2) Any outer protective mesh covering (outer bag or chafing gear) of a mesh size less than two times the mesh size of the inner codend is prohibited. Any outer protective mesh covering which is not aligned knot-to-knot to the inner net and tied to the straps and riblines is prohibited. Such outer mesh must not be connected directly to the terminal (closed) end of the codend. Thread size of an outer protective mesh covering must not be greater than four times the diameter of the thread size of the inner net.

(i) *Directed fisheries.* (1) It is unlawful for any operator or owner of a foreign fishing vessel to conduct a directed fishery for any species or species complex for which that nation does not have an allocation of TALFF.

(2) It is a rebuttable presumption that any trawl that contains more than 50 percent by weight of any species or species complex (such as "other

species") was conducted for the purpose of catching that species or species complex and therefore constitutes a directed fishery for that species or species complex.

(j) *Reports and recordkeeping.* (1)-(3) [Reserved]

(4) *Logbooks.* (i) The operator of each foreign fishing vessel shall maintain logbooks available from the National Marine Fisheries Service in accordance with the requirements of § 611.9, paragraphs (j)(4), (5), and (6) of this section, and the conditions and restrictions of that vessel's foreign fishing permit.

(ii) Cargo vessels (class 3 permit) do not receive National Marine Fisheries Service logbooks, and must comply with the transfer log requirements of § 611.9(b).

(iii) The logbook for foreign vessels catching fish in the directed fishery contains the daily fishing log (see paragraph (j)(5) of this section), the daily cumulative catch log (see § 611.9(d)) and the transfer log (see paragraph (j)(5) of this section and § 611.9(b)).

(iv) The logbook for foreign vessels receiving U.S.-harvested fish contains the daily receipt log (see paragraph (j)(5) of this section), the daily cumulative receipt log (see paragraph (j)(6) of this section), and the transfer log (see paragraph (j)(5) of this section and § 611.9(b)).

(v) These logs are the basis for all reports required under § 611.4, § 611.9, and this section. Required data must be recorded in duplicate and in English. Weights recorded in the daily fishing, daily cumulative catch, daily receipt, and daily cumulative receipt logs must be round weights (the weight of the whole fish). Weights recorded in transfer logs must be product weights (the weight of processed fish). On-deck estimates (round weight) of catch or amounts received in each haul must be logged before the next codend is on deck. The factory weight (product weight converted to round weight) of each haul or codend received must be recorded within 24 hours after the codend is on deck. The logbooks must be made available for inspection by the National Marine Fisheries Service or U.S. Coast Guard personnel, who may remove the original handwritten pages at any time. All original handwritten pages in the logbooks not removed by the National Marine Fisheries Service or U.S. Coast Guard personnel must be submitted to the Regional director within three weeks after termination of a fishery due either to closure of the fishery, departure of a vessel from the grounds for the remainder of the season, or expiration of the fishing permit. Duplicate copies must be retained on the foreign vessel throughout the period the vessel is permitted to receive U.S.-harvested fish.

(5) *Daily catch, daily receipt, and transfer logs.* The following information must be recorded accurately in the daily catch, daily receipt, and transfer logs as applicable:

(i) Vessel name and permit number;

(ii) Radio call sign;

(iii) Dates;

(iv) Times and vessel's positions (in degrees and minutes of latitude and longitude) at the beginning and end of each set (when the net is at fishing depth);

(v) Bottom depth, averaged over length of tow;

(vi) Depth of gear, averaged over length of tow;

(vii) Time and vessel's position (in degrees and minutes of latitude and longitude) at each transfer of fish or fish products between foreign vessels;

(viii) Product weight or number, by species, of all fish or fish products transferred between foreign vessels;

(ix) Time and vessel's position (in degrees and minutes of latitude and longitude) at each receipt of U.S.-harvested fish;

(x) On-deck estimates (round weight) of the amount of catch or receipt and the factory weight (product weight converted to round weight) to the nearest tenth of a metric ton (0.1 mt) of directed species in each haul or codend received;

(xi) On-deck estimates (round weight) of the amount of catch or receipt and the factory weight (product weight converted to round weight) to the nearest hundredth of a metric ton (0.01 mt) in each haul or codend received of species for which vessels of that nation have an incidental catch or retention allowance;

(xii) Amount of catch or receipt in numbers in each haul or codend received of marine mammals and prohibited species (salmonids, Pacific halibut, Dungeness crab); and

(xiii) Disposition of the fish caught or received: human consumption (including consumption on board), fishmeal, or discarded.

(xiv) For each haul in which Pacific whiting is not the directed species, the name of the directed species must be entered in the daily catch or daily receipt log following the trawl or receipt number.

(6) *Daily cumulative catch logs.* In addition to the requirements of § 611.9, information for each directed fishery must be maintained on a separate page of this log. If the directed (allocated) species is not Pacific whiting, the name of the directed species must be entered on the line below the permit number.

(7) *Daily cumulative receipt logs.* Operators of foreign vessels receiving U.S.-harvested fish must maintain a daily cumulative receipt log and must record on a daily basis the round weight of all species received during the permit period, whether retained or discarded. Information for each directed species and each fishing area must be maintained on a separate page of the log. (If the directed species is not Pacific whiting, the name of the directed species must be entered on the line below the permit number.) Data for a day (0001 GMT to 2400 GMT) must be recorded before the end of the next day. The following information must be recorded accurately in the daily cumulative receipt log:

(8) *Weekly reports by FFV's.* Any weekly catch report (CATREP) submitted under § 611.4(f)(2) or weekly joint venture receipts report (RECREP) submitted under § 611.4(f)(3) must state if it pertains to a directed species other than Pacific whiting by following the word "CATREP" or "RECREP" with the name of the directed species. If more than one directed fishery is conducted in the same week, a separate CATREP or RECREP must be submitted for each species.

(9) In addition to the requirements of § 611.4, the operator of each foreign fishing vessel must submit reports as follows to the Regional Director.

(i) *Daily report.* From the time the Secretary estimates that 90 percent of JVP, an incidental retention allowance, a nation's fishing allocation, or incidental catch allowance of any species or species complex has been reached, and so notifies the designated representative of the nation(s) involved, the information required under § 611.9(f)(2) "Weekly Catch Report" and § 611.4(f)(3) "Weekly Joint Venture Receipts Report" must be submitted on a daily basis and must reach the Regional Director no later than three days after the reported fishing day.

(ii) *Annual report.* Each nation with fishing vessels conducting directed fishery operations must report annual catch and effort statistics by May 31 of the following year in tabular form as follows:

(A) Effort in hours trawled, by vessel class, by gear type, by month, by ½° latitude by 1° longitude statistical areas.

(B) Catch by vessel class, by gear type, by month, by ½° latitude by 1° longitude statistical areas:

(*1*) To the nearest tenth of a metric ton (0.1 mt round weight), any species for which that nation has a fishing allocation or incidental catch allowance; and

(*2*) The numbers of salmonids, Pacific halibut, and Dungeness crab.

(iii) Any weekly catch report (CATREP) submitted under § 611.9(e) or weekly report of receipt of U.S.-harvested fish (RECREP) submitted under § 611.9(f) must state if it pertains to a directed species other than Pacific whiting by following the word "CATREP" or "RECREP" with the name of the directed species. If more than one directed fishery is conducted in the same week, a separate CATREP or RECREP must be submitted for each such species.

(k) *Prohibited species—joint venture fishery.* Any prohibited species or part thereof which is received from a vessel of the United States, after allowing for sampling by a U.S. foreign fishing observer (if any), must be returned to

sea immediately with a minimum of injury regardless of its condition. (Regulations concerning prohibited species taken in the directed fishery are found at § 611.11 and § 611.9(d)(4).)

(The reporting requirements in paragraph (j)(9) were approved by the Office of Management and Budget under control number 0648-0075)

[47 FR 43970, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 27519, July 5, 1984; 50 FR 26213, June 25, 1985; 50 FR 35025, 25026, Aug. 28, 1985]

EFFECTIVE DATE NOTE: At 50 FR 35025, 35026, Aug. 28, 1985, effective October 23, 1985, § 611.70 was amended by removing and reserving paragraphs (j)(1), (j)(2) and (j)(3) and revising paragraph (j)(8). For the convenience of the user, the superseded text is set forth below.

§ 611.70 Pacific coast groundfish fishery.

* * * * *

(j) *Reports and recordkeeping.* (1) In addition to the vessel reporting requirement of § 611.4, the operator of each foreign fishing vessel permitted for both directed fishing and joint venture operations shall notify the appropriate Coast Guard commander (see § 611.4, Tables I and II) before beginning and before ending a period of joint venture processing. Such notice must be *transmitted before the event requiring notice* and *delivered* within 72 hours of the event. The notices required by this paragraph must contain the following information: the message identifier "VESREP" to indicate it is a required vessel report, vessel name, international radio call sign, date (month and day), time (hour and minutes GMT), latitude and longitude (degrees and minutes), fishing area (use code specified in Appendix II to § 611.9), and the action code "START JV OPS" or "END JV OPS." An illustration of a sample report is as follows: The stern trawler NAVIS, LTUX, will begin joint venture processing on July 9, 1982, at 1320 GMT at position 43°40′ N. latitude, 124°30′ W. longitude in the Columbia area. The required message would be transmitted as follows:

From: M/V NAVIS, LTUX
To: Coast Guard Pacific Area San Francisco CA
VESREP
NAVIS/LTUX/0709/1320/4340N/12430W/71/START JV OPS//

(2) *Multiple shift reports.* If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports (required under § 611.4) for all fishing area shifts occurring during one fishing day (0001-2400 G.M.T.). This message must be transmitted prior to the last shift made in the day and delivered within 72 hours of the shift. All other requirements of § 611.4 must be followed.

(3) *Report of fish on board when entering fishery.* Before operating in this fishery, the operator of each foreign vessel with fish on board will report to the Regional Director the species and amounts of fish on board which were harvested outside of this fishery. Any fish on board not so reported will be presumed to have been harvested in this fishery. Such reports must be submitted under the procedures specified in § 611.4(b).

* * * * *

(8) *Weekly report of receipts of U.S.-harvested fish by foreign processing vessels.* Weekly reports must be submitted as specified in § 611.9. In addition to the information required by § 611.9(f), weekly reports must contain:

(i) Weight of fish discarded, by species, rounded to the nearest tenth of a metric ton (0.1 mt). Discard amounts must be followed by the word "DISCARD." Amounts of fish not reported as discarded are presumed to be retained.

(ii) For each foreign vessel receiving U.S.-harvested fish, the total number of U.S. vessels that delivered codends and the total number of codends received, by area, during the reporting period. At the end of the report for each area (see § 611.9, Appendix 5, Item C) add the letter "V" (for "vessel") followed by the number of U.S. vessels which delivered fish, and the letter "R" (for "received") followed by the number of codends received. EXAMPLE: The stern trawler NAVIS, operating under permit number LT-82-0001-A which authorizes the receipt of U.S.-harvested Pacific whiting and other associated species in the Pacific groundfish fishery, received 26 codends from four U.S. vessels in the Columbia area (code 71) during the week of June 6 through 12, 1982. The following species and amounts were received:

Pacific whiting (code 704) 156.3 mt; rockfish excluding Pacific ocean perch (code 849) 0.2 mt; jack mackeral (code 208) 27.0 mt; and other species (code 499) 5.0 mt (of which 0.1 mt was retained and 4.9 mt were discarded). During the same week NAVIS received 2 codends containing a total of 8.0 mt of whiting from one U.S. vessel in the Eureka area (code 72). The text of the Telex report would appear as follows:

RECREP
NAVIS/LT820001A/0612//

71//704/156.3//849/.2//208/27.0//499/.1//
499/4.9 DISCARD//V4/R26//72//
704/8.0//V1/R2//

* * * * *

Subpart F—Western Pacific Ocean

§ 611.80 Seamount groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for pelagic armorheads and alfonsins conducted under a Governing International Fishery Agreement in the fishery conservation zone of the western Pacific Ocean.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF.* The TALFFs for the seamount groundfish fisheries are published in the FEDERAL REGISTER. Current TALFFs are also available from the Regional Director.

(3) *Species definitions.* The category "other groundfish" used in TALFFs and in allocations includes all species of finfish caught incidental to directed fishing for pelagic armorheads and alfonsins except billfish, oceanic sharks, wahoo, and mahimahi, and other fish caught pursuant to § 611.81.

(4) *Open season.* Foreign fishing authorized under this subpart may begin at 0800 G.m.t. on May 1 and will terminate not later than 0800 G.m.t. on October 1. This fishery may also be closed in accordance with § 611.15.

(c) *Prohibited species.* All Continental Shelf fishery resources, and all other species of fish except for alfonsins, armorheads and other groundfish, are prohibited species and shall be treated in accordance with § 611.11.

(d) *Open area.* Foreign vessels may engage in fishing for pelagic armorheads, alfonsins, and other groundfish only in those portions of the fishery conservation zone west of the 180° meridian and north of 28° N. latitude.

(e) *Gear restrictions.* No gear other than trawl or bottom longline gear may be used.

(f) *Collection, maintenance and, reporting of data.* In addition to the requirements of §§ 611.4 and 611.9, each foreign nation or foreign fishing vessel shall collect, maintain, or report on a timely basis, accurate data relating to fishing operations as specified in this section. All submissions required by this section shall be sent to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 or, in the case of logbook data, hand delivered to the National Marine Fisheries Service observer on board the vessel upon his request. The following logs and reports are required:

(1) *Fishing log.* (i) Each FFV which conducts fishing operations must maintain and submit a fishing log which contains the data required by § 611.9 (d) and (e).

(ii) In addition to the catch of allocated species, the log must contain the approximate weight (in kilograms) by genus, of the incidental catch of the prohibited species corals designated by the definitions of Continental Shelf fisheries resources in § 611.2 of this part.

(iii) If the fishing log is not delivered to a National Marine Fisheries Service observer on board the vessel, it shall be mailed to the Regional Director not later than 30 days following completion of fishing.

(2) *Annual report.* Each nation whose vessels engage in the seamount groundfish fishery shall submit by February 28 of the following year, annual catch and effort statistics as follows:

(i) Catch in metric tons by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings; pelagic armorhead, alfonsin, other groundfish;

(ii) Catch in kilograms of corals taken incidental to fishing operations by month by area to the nearest one-tenth degree (0.1°) latitude and longitude by the following species groupings: pink coral, gold coral, bamboo coral, other corals; and

(iii) Effort, in hours trawled or average number of hooks soaked per 24-hour period, by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

(Approved by the Office of Management and Budget under control number 0648-0075)

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 76541, Dec. 27, 1979; 45 FR 14587, Mar. 6, 1980; 47 FR 44265, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983; 50 FR 35025, 35026, Aug. 28, 1985]

EFFECTIVE DATE NOTE: At 50 FR 35025, Aug. 28, 1985, § 611.80 was amended by revising paragraphs (f)(1) (i) and (ii), effective October 28, 1985. For the convenience of the user, the superseded text is set forth below.

§ 611.80 Seamount groundfish fishery.

* * * * *

(f) * * *

(1) *Fishing log.* (i) Each fishing vessel which conducts trawling operations shall maintain and submit a fishing log which contains data for each haul as follows:

(A) Vessel name and permit number;

(B) Date;

(C) Codend mesh size to the nearest millimeter;

(D) Length of the footrope to the nearest tenth of a meter (0.1 m.) and average distance between footrope and headrope to the nearest tenth of a meter (0.1 m.);

(E) Time at the beginning of the haul and the total duration of the haul to the nearest five (5) minutes;

(F) Location at the midpoint of each haul to the nearest tenth (0.1) minute of latitude and longitude;

(G) Average depth of the seabottom to the nearest meter;

(H) Average fishing depth of the footrope to the nearest meter;

(I) Average fishing speed of the vessel (towing speed) to the nearest tenth of a knot (0.1 kt);

(J) Catch, by individual species, to the nearest tenth of a metric ton (0.1 m.t.); and

(K) Approximate weight (kilograms, by genus, of the incidental catch of the corals designated in § 611.2(h) of this part.

(ii) Each fishing vessel which conducts longlining operations shall maintain and submit a fishing log which contains data for each fishing day as follows:

(A) Vessel name and permit number;

(B) Date;

(C) Midday location of fishing, to the nearest tenth (0.1) minute of latitude and longitude;

(D) Average depth of hooks set, in meters;

(E) Number of hooks set and average soak time;

(F) Number of fish caught, by species, for pelagic armorhead, alfonsin, and other groundfish species.

* * * * *

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

(a) *Purpose*—(1) *General.* This section regulates all foreign lingline fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the fishery conservation zone (FCZ) of the United States in the Pacific Ocean, excluding the portion of the FCZ seaward of Alaska.

(2) *Species definitions.* For the purposes of this section, the following terms have the following meanings: (i) "Mahimahi" means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*); (ii) "oceanic sharks" means sharks of the families *Carcharhinidae, Alopiidae, Sphyrnidae,* and *Lamnidae;* (iii) "billfish" means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*); and (iv) "wahoo" means fish of the species *Acanthocybium solanderi.*

(b) *Authorized fishery*—(1) *Regulatory areas.* For the purposes of this section, the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) is divided into five regulatory areas: West Coast, Guam and the Northern Mariana Islands, Hawaii and Midway Islands, American Samoa, and U.S. Possessions (Table 1).

(2) *Zones.* The regulatory areas are comprised of the following "billfish retention" and "billfish non-retention" zones (each zone is measured from the baseline used to measure the U.S. territorial sea):

TABLE I

Regulatory area	Billfish retention zones	Billfish nonretention zones
West Coast	Beyond 100 nautical miles	Betwen 12 and 100 nautical miles.
Guam and Northern Mariana Islands.	(1) Beyond 50 nautical miles from Guam, Rota, Tinian, Aguijan, and Saipan; and (2) beyond 12 nautical miles of the remaining islands of the Northern Mariana Islands.	Between 12 and 50 nautical miles from Guam, Ruta, Tinian, Aguijan, and Saipan.
Hawaii and Midway Islands	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu; and (2) beyond 50 nautical miles from the remaining islands of the State of Hawaii and Midway Islands.	(1) Between 12 and 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu; and (2) between 12 and 50 nautical miles from the remaining islands of the State of Hawaii and Midway Islands.
American Samoa	Beyond 12 nautical miles from American Samoa.	No nonretention zone.
U.S. Possessions	Beyond 12 nautical miles from any other possession of the United States in the Central and Western Pacific Ocean.	Do.

(3) *General.* Foreign vessels subject to this section are authorized to fish in the U.S. FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this section.

(i) *Non-retention fishery.* Except as provided in paragraph (b)(3)(ii) of this section, all billfish, oceanic sharks, wahoo, mahimahi, and other fish caught by foreign vessels in the course of fishing under this section shall be returned to the sea in accordance with the requirements of paragraph (c) of this section.

(ii) *Retention fishery.* Foreign vessels fishing subject to this section may retain billfish, oceanic sharks, wahoo, and mahimahi to the extent that retention is authorized by paragraphs (b)(4) and (5) of this section.

(4) *Total allowable level of foreign fishing (TALFF), joint venture processing (JVP), national allocations, and reserves*—(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the FEDERAL REGISTER. Current TALFFs, reserves and JVPs are also available from the Regional Director.

(ii) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahi mahi which may be caught and retained in each regulatory area by foreign vessels subject to this section is limited to the TALFF for each applicable regulatory area, and to the amount of the applicable national allocation.

(B) No foreign vessel subject to this section may catch and retain billfish within the billfish non-retention zones set out in Table I of paragraph (b)(2) of this section.

(iii)(A) *Determination.* (*1*) As soon as practicable after September 1 of each year, the Regional Director, Southwest Region, shall determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable regulatory area.

(*2*) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the expected domestic harvest for that species in that area, the Regional Director shall apportion to TALFF the entire amount of the reserve for the applicable species in the applicable regulatory area. No reserve amounts shall be apportioned to TALFF if domestic vessels have harvested 80 percent or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

(B) *Notice.* The Assistant Administrator for Fisheries, NOAA, shall publish in the FEDERAL REGISTER a notice of each determination made under paragraph (b)(4)(iii)(A) of this section.

(5) *Cancellation of authority to retain.* (i) The authority of a foreign

vessel to retain an applicable species is cancelled:

(A) When the national allocation for the applicable species is reached; or

(B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (b)(5)(ii) of this section.

(ii) The Assistant Administrator shall determine, on the basis of the information specified in § 611.13, when the TALFF or optimum yield (OY) for a billfish species, oceanic sharks, wahoo, or mahimahi in a regulatory area will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator shall notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is cancelled.

(iii) Any cancellation under this section shall remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.13 do not apply to foreign vessels fishing subject to this section.

(c) *Prohibited species*—(1) *General.* The following are prohibited species under this section:

(i) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(ii) All billfish, oceanic sharks, wahoo and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and

(iii) All billfish caught in a billfish non-retention zone. (See Table I of paragraph (b)(2) of this section.)

(2) *Treatment.* All prohibited species shall be treated in accordance with § 611.11.

(3) *Additional requirements for billfish and oceanic sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(4) *Rebuttal of presumption.* Foreign vessels fishing subject to this section may rebut the presumption of § 611.11(d) by:

(i) Storing all prohibited species caught outside the FCZ in a separate part of the vessel hold which can be sealed, and arranging inspection and sealing of the vessel hold by U.S. authorities before commencing fishing in the FCZ or in billfish non-retention zones; or (ii) other reasonable means which may be authorized by the Administrator of the Western Pacific Program Office (WPPO) if, in consultation with the U.S. Coast Guard, the Administrator of WPPO, determines that special circumstances warrant alternative arrangements.

(5) *Procedure for hold sealing.* (i) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Administrator, WPPO (Southwest Region, National Marine Fisheries Service, Post Office Box 3830, Honolulu, Hawaii 96812, telephone: 808-946-2181) at least 48 hours in advance of the date for which inspection is requested.

(ii) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Pago Pago, American Samoa; Agana, Guam; Saipan, Northern Mariana Islands; and San Diego, California.

(iii) Additional ports for hold inspections may be arranged with the Administrator, WPPO.

(6) *Other requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

(d) *Vessel reporting.* (1) In lieu of the vessel reporting requirements of § 611.4, the owner or operator of each foreign fishing vessel engaging in the Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery shall notify the Coast Guard in the manner set forth in paragraph (d)(3) of this section, of:

(i) The date of the Sunday beginning the week during which each vessel intends to *begin* fishing in the FCZ (action code BEGIN), the fishing area and the approximate longitude and latitude where it intends to begin fishing; (see paragraph (d)(5) of this section for use of action codes); and

(ii) The date of the Sunday beginning the week during which each vessel intends to *cease* fishing in the FCZ (action code CEASE) and the fishing area where it intends to cease fishing, with the approximate longitude and latitude.

(2) For purposes of this paragraph (d) of this section, a week shall begin at 0001 G.m.t. each Sunday. The fishing areas are listed in Appendix C to Subpart A.

(3) The vessel reports required by this paragraph (d):

(i) Shall be in English;

(ii) Shall be delivered via commercial facilities to the appropriate Coast Guard commander who will relay them to the appropriate National Marine Fisheries Service Region (see Appendix A to Subpart A for appropriate Coast Guard and National Marine Fisheries Service addresses);

(iii) Shall be delivered not later than seven days prior to the Sunday beginning the earliest week included in the report;

(iv) Need not be submitted on temporary departures from the FCZ, such as for port calls (inside the seaward boundary of one of the coastal states) or when operating at and occasionally outside the seaward limits of the FCZ; and

(v) Shall include departure from one fishing area and entry into another fishing area.

(4) Minor modifications in times reported in paragraph (d)(1) of this section, as necessitated by changing fishing conditions, weather, or vessel operating conditions, need not be reported. Major changes should be reported at the earliest practicable date. Examples of major changes include: Cancellation of a vessel's previously reported intentions to fish in a fishing area, and changes of more than two weeks in a previously reported time of arrival in, or departure from, a fishing area. The addition of an area to a vessel's fishing intentions requires the basic report of paragraph (d)(1) of this section.

(5) The vessel reports required by this paragraph (d) shall contain the following information: The message identifier "PACREP" to indicate it is a required vessel report in the Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery; vessel name; international radio call sign; the date (month and day) of the Sunday on which the weekly period begins; the fishing area; the approximate longitude and latitude that it will enter and leave a fishing area; and the appropriate action code (BEGIN or CEASE).

(6) Vessel reports are required for each vessel. The vessel reports required by this paragraph (d) should be consolidated, if possible, and submitted for groups of vessels (on a vessel-by-vessel basis) by a designated representative for a foreign nation's fishing vessels. Illustrations of reports follow:

(i) Able Steamship Company, designated representative for Bolivian longliners, wishes to report the vessel *CABLE* (EXRC) which will begin fishing in the Hawaii and Midway Islands FCZ (area code 81) between February 10 and 16, 1980; cease fishing in that FCZ approximately February 26, begin fishing in the Johnston Atoll FCZ (area code 84) about February 28; cease fishing in the Johnston Atoll FCZ between March 2 and 8; begin fishing in the American Samoa FCZ (area code 83) about April 7; and cease fishing in the American Samoa FCZ about May 21. Able Steamship Company also wishes to report the vessel *DABBLE* (EQUP) which will begin fishing in the American Samoa FCZ on February 19 and cease fishing on March 18. He will then go to Howland and Baker Islands FCZ (area code 85) about March 23 and cease fishing on April 20. The required message must be delivered not later than February 3 to Commander, 14th Coast Guard District. The message would be transmitted as follows:

From: Able Steamship Company
To: Commander, 14th Coast Guard District, Honolulu, Hawaii (Telex: 392401); Southwest Region, NMFS, Terminal Island, CA
PACREP
CABLE/EXRC/0210/2710N/17920W/81/
BEGIN//0224/2210N/16005W/81/
CEASE//0224/1710N/17010W/84/
BEGIN//0302/1705N/17205W/84/
CEASE//0406/1510S/16510W/83/
BEGIN//0518/1435S/16640W/83/
CEASE//DABBLE/EQUP/0217/1405S/
16600W/83/BEGIN//0316/1650S/
16610W/83/CEASE//0323/0510S/
17800W/85/BEGIN//0420/0230N/
17930E/85/CEASE//

(ii) In the above illustration, Able Steamship Company subsequently learns that the vessel *Cable* ceased fishing in the Johnston Atoll FCZ on March 19 (a minor modification which need not be reported) and intends to cease fishing in the American Samoa FCZ about June 27 instead of May 21 (a modification which must be reported). Further, the vessel *Dabble* no longer intends to fish in the American Samoa FCZ (a modification which must be reported). The text of the message would appear as follows:

PACREP
CHANGE CABLE/EXRC/0518/1435S/16640W/83/CEASE//to 0622/1435S/16640W/83/CEASE//
CANCEL DABBLE/EQUP/0217/1405S/16600W/83/BEGIN//0316/1650S/16610W/83/CEASE//

(e) *Collection and reporting of data.* In lieu of the requirements of § 611.4 (f)(2) and (f)(4) and § 611.9 (d) and (e), the following data collection and reporting requirements shall apply.

(1) *Daily cumulative catch log.* All foreign fishing vessels shall maintain a daily cumulative catch log in English. This log shall contain on a daily and cumulative basis data on all billfish, oceanic shark, wahoo, mahimahi, and other fish caught in the FCZ during the permit period. The log shall be maintained aboard the vessel during the duration of the permit period. Information for each fishing area shall be maintained on a separate page of the log. The log shall contain the following information:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Fishing area and area code number where fishing is conducted (see Appendix C to Subpart A);

(iv) Date;

(v) Noon-day position of vessel, within one-tenth of 1° longitude and latitude;

(vi) Number and round weight (in kilograms) of each species (by species codes) of billfish, oceanic sharks, wahoo, and mahimahi caught and retained each day and cumulatively;

(vii) Number of each species (by species codes) of billfish, oceanic shark, wahoo, mahimahi, and other fish caught and released each day and cumulatively;

(viii) Number of fish of each species released alive, each day and cumulative; and

(ix) Number of hooks set by type of bait.

(2) *Quarterly catch report.* Each operator of an FFV which fishes under this section must submit, through the designated representative, a quarterly report containing, on a vessel-by-vessel basis, the following information:

(i) Name of the vessel;

(ii) Permit number;

(iii) Month and day of the last day of the period covered by the report;

(iv) For each fishing area where fishing occurred during the reporting period:

(A) Number and round weight of each allocated species caught and retained to the nearest tenth of a metric ton (0.1 m.t.);

(B) Number of each species of billfish, oceanic shark, wahoo, mahimahi, and other fish caught and released during the reporting period;

(C) Number of fish of each species released alive;

(D) Total number of hooks set, by type and bait;

(E) Number of days fished in the FCZ during the reporting period; and

(F) Average number of hooks set per day fished, by type of bait.

(3) *Quarterly marine mammal report.* Each operator of an FFV which fishes under this section must submit, through the designated representative, the marine mammal report required by § 611.4(f)(4) on a quarterly basis in lieu of weekly reports.

(4) *Submission of reports.* The quarterly reports required by this paragraph (e) shall be submitted within 60 days of the end of each calendar quarter to:

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, Telephone: 213-548-2575.

(Approved by the Office of Management and Budget under control number 0648-0075)

[45 FR 14585, Mar. 6, 1980, as amended at 46 FR 1739, Jan. 7, 1981; 47 FR 44265, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983; 50 FR 35025, 35026, Aug. 28, 1985]

EFFECTIVE DATE NOTE: At 50 FR 35025, Aug. 28, 1985, effective October 28, 1985, § 611.81 was amended by removing in paragraph (e)(2) the words "foreign nation whose vessels fish under this section shall submit" and inserting the words "operator of an FFV which fishes under this section must submit" and by revising paragraph (e)(3). For the convenience of the user, the superseded text is set forth below.

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

* * * * *

(e) * * *

(3) *Quarterly report of marine mammal incidental catch.* Each foreign nation whose vessels fish under this section shall submit, through the designated representative, the report of marine mammal incidental catch required by § 611.9(g) on a quarterly basis in lieu of weekly reports.

* * * * *

§ 611.82 Precious coral fishery.

(a) *Purpose.* This section regulates foreign fishing under a Governing International Fishery Agreement for precious corals within the fishery conservation zone (FCZ) seaward of Hawaii, Guam, and American Samoa.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) *Exploratory area* means the following permit areas in the FCZ outside the closed areas listed in § 611.82(g).

(i) Permit Area X-P-H. All coral beds seaward of the State of Hawaii.

(ii) Permit Area X-P-AS. All coral beds seaward of American Samoa.

(iii) Permit Area X-P-G. All coral beds seaward of Guam.

(2) *Precious coral* means any of the following species of coral:

Pink coral (also known as red coral) *Corallium secundum*
Pink coral (also known as red coral) *Corallium regale*
Pink coral (also known as red coral) *Corallium laauense*
Gold coral *Gerardia sp.*
Gold coral *Callogorgia gilberti*
Gold coral *Narella sp.*
Gold coral *Calyptrophora sp.*
Bamboo coral *Lepidisis olapa*
Bamboo coral *Acanella sp.*
Black coral *Antipathes dichotoma*
Black coral *Antipathes grandis*
Black coral *Antipathes ulex*

(3) *Regional Director* means the Southwest Regional Director, National Marine fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731.

(4) *Selective gear* means gear that can be used to harvest coral selectivley by differentiating as to type, size, quality, or other characteristics.

(c) *Authorized fishery.* (1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF and reserve.* The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), the amounts of coral set aside as reserves, the estimated domestic annual harvest (DAH), and domestic annual processing (DAP) in exploratory areas are published in the FEDERAL REGISTER prior to the beginning of each fishing year. Current TALFF and JVP amounts are available from the Regional Director.

(3) *Determination of TALFF and reserves.* The quotas for each of the three exploratory areas (set forth in Table 1 to 50 CFR Part 680) will be held in reserve for harvest by vessels of the United States in the following manner:

(i) At the start of the fishing year (July 1), the reserve for each exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(ii) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(4) *Release of reserves.* The Secretary will release to TALFF for each exploratory area an amount of coral equal to the quota minus two times the amount harvested by vessels of the United States in that July 1-December 31 period.

(5) The Secretary will publish in the FEDERAL REGISTER a notice of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) *Open season.* Foreign fishing authorized under this section may be conducted from the time that the reserve is released to TALFF until the national allocation has been reached. This fishery will be closed in accordance with § 611.13.

(e) *Prohibited species.* All species of fish over which the United States exercises fishery management authority and for which there is no applicable national allocation are prohibited species and will be treated in accordance with § 611.11. All black corals are prohibited species.

(f) *Open area.* Foreign vessels may engage in fishing for precious coral in the three exploratory areas in the FCZ seaward of Hawaii, Guam, and American Samoa, but not in those coral beds designated in § 611.82(g).

(g) *Closed areas.* The following precious coral beds are closed to all foreign fishing:

Coral Bed—Midpoint

(1) Ke-ahole Point, Hawaii, 19°46.0′ N. latitude, 156°06.0′ W. longitude;
(2) Makapuu, Oahu, Hawaii, 21°18.0′ N. latitude, 157°35.5′ W. longitude;
(3) Kaena Point, Oahu, Hawaii 21°35.4′ N. latitude, 158°22.9′ W. longitude;
(4) WestPac Bed, 23°18.0′ N. latitude, 162°35.0′ W. longitude;
(5) Brooks Banks, 24°06.0′ N. latitude, 166°48.0′ W. longitude; and
(6) 180 Fathom Bank, N.W. of Kure, 28°50.2′ N. latitude, 178°53.4′ W. longitude.

Each coral bed includes the area within two nautical miles of the midpoint.

(h) *Gear restrictions.* (1) No foreign vessel fishing for coral may use gear other than:

(i) Dredges with tangle nets; or

(ii) Selective gear.

(2) A foreign vessel may use only selective gear to harvest coral from the FCZ of the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

(i) *Collection, maintenance and reporting of data.* In addition to the requirements of §§ 611.4 and 611.9, each foreign fishing vessel must collect, maintain, or report on a timely basis accurate data relating to fishing operations as specified in this section. The requirement of § 611.9(d) that each vessel maintain a daily fishing log is waived for vessels fishing for coral under this section. In lieu of that log, vessels must enter into the logbook provided to the vessel by the National Marine Fisheries Service by midnight of the day following the day on which the coral was taken, the information specified in paragraphs (i)(1)(i) through (i)(1)(x) of this section. All submissions required by this section must be sent to the Regional Director, or, in the case of logbook data, must be hand delivered to the National Marine Fisheries Service observer (if an observer is on board the vessel) upon request. The following log and reports are required:

(1) Whenever a permitted vessel lands coral harvested under a permit, the permittee must within 72 hours mail to the Regional Director a copy of the log with complete harvest information for the coral sold or delivered including:

(i) Name of vessel;

(ii) Call sign of vessel;

(iii) Permit number of vessel;

(iv) Area fished by statistical area;

(v) Average depth of water where the coral was harvested;

(vi) Weight of coral harvested by species, to the nearest tenth of a kilogram (landed weight, air dried for at least 24 hours);

(vii) Fishing effort in hours where the coral was harvested;

(viii) Dates of harvest;

(ix) Method of harvest;

(x) Observations that may be made about the habitat (current, bottom type, bottom topography, bottom slope);

(xi) Amount of coral sold by species;

(xii) Sale price;

(xiii) Date of sale; and

(xiv) Name(s) and address(es) of buyer(s).

(2) For any coral that is not sold within 72 hours of landing the permittee shall mail to the Regional Director within 72 hours of its sale the information specified in paragraphs (i)(1)(xi) through (i)(1)(xiv) of this section.

(3) *Annual report.* Each nation whose vessels engage in the precious

coral fishery must submit by November 30 of the following fishing year annual catch and effort statistics as follows:

(i) Catch in kilogram by gear type by month by area to the nearest one-half degree (0.5°) latitude and by one degree (1°) longitude, by the following species groupings: pink (red), gold, bamboo, other precious coral, and nonprecious coral; and (ii) effort, in hours fished by month by area to the nearest one-half degree (0.5°) latitude and one degree (1°) longitude.

(Approved by the Office of Management and Budget under control number 0648-0075)

[48 FR 39230, Aug. 30, 1983, as amended at 50 FR 35025, 35026, Aug. 28, 1985]

Effective Date Note: At 50 FR 35025, Aug. 28, 1985, § 611.82(i) was amended by removing in the second sentence the words "daily cumulative catch log" and inserting in their place "daily fishing log", effective October 28, 1985.

Subpart G—North Pacific Ocean and Bering Sea

§ 611.90 General provisions.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone seaward of the State of Alaska.

(b) *Open season.* Except as otherwise specified in the following sections, fishing by foreign vessels may be conducted throughout the year. The specific times for opening and closing seasons and areas in this subpart shall be 0800 G.m.t. on the dates indicated. The fisheries regulated under this subpart may also be closed in accordance with § 611.13.

(c) *Fishing areas*—(1) *General.* Unless specifically authorized, no foreign vessel may engage in fishing within twelve nautical miles of the baseline used to measure the territorial sea.

(2) *Support operations.* Loading and other support operations by foreign vessels are permitted only in areas where the vessel being supported is authorized to fish, and in the following areas between three and twelve nautical miles from the baseline used to measure the territorial sea:

(i) Near Forrester Island, Alaska, bounded on the north by 54°54′ N. latitude, on the east by 133°16′ W. longitude, and on the south by 54°44′ N. latitude;

(ii) On the east side of Kayak Island, Alaska, between 59°48′ N. latitude and 59°56′ N. latitude west of 143°53′ W. longitude, and on the west side by Kayak Island between 59°52′ N. latitude and 60°07′ N. latitude east of 145° W. longitude;

(iii) North of Tonki Cape on Afognak Island, Alaska, bounded on the north by 58°35′ N. latitude, on the south by 58°25′ N. latitude, on the west by 152°02′ W. longitude and on the east by 151°52′ W. longitude;

(iv) North and west of Sanak Island, Alaska, bounded on the north by 54°36′ N. latitude, on the south by 54°26′ N. latitude, on the west by 163°05′ W. longitude and on the east by 162°40′ W. longitude;

(v) On the south side of Unalaska Island, Alaska, between 167°18′ W. longitude and 167°40′ W. longitude (from January 1 to October 15, only);

(vi) On the north side of Unalaska Island, Alaska, between 167°15′ W. longitude and 167°35′ W. longitude (from January 1 to October 15, only);

(vii) On the south side of Umnak Island, Alaska, between 168°15′ W. longitude and 168°30′ W. longitude (from October 15 to January 1, only);

(viii) On the north side of Umnak Island, Alaska, between 168°25′ W. longitude and 168°40′ W. longitude and between 168°50′ W. longitude and 169°00′ W. longitude (from October 15 to January 1, only);

(ix) Off St. George Island of the Pribilof Islands, Alaska (from November 1 to May 1, only);

(x) On the north side of St. Matthew Island, Alaska, between 172°29′ W. longitude, and 172°46′ W. longitude, and on the south side of St. Matthew Island, between 172°17′ W. longitude, and 172°35′ W. longitude, and between 172°54′ W. longitude, and 173°04′ W. longitude.

(d) *Gear restriction.* No foreign vessel may possess crab pots in the FCZ while engaging in any fishery other than the Tanner crab fishery.

(e) *Statistical reporting.* (1) In addition to the requirements of § 611.9, the owner or operator of any foreign fishing vessel shall maintain catch and effort statistics as required by this subpart and shall report the information, through the designated representative, to the Director, Alaska Region, National Marine Fisheries Service, Juneau, Alaska, U.S.A. 99801.

(2) In the Gulf of Alaska groundfish fishery and the Bering Sea groundfish fishery, the owner and operator of each FFV must record and report, in addition to allocated and authorized species, the prohibited species salmonids (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish. In the Bering Sea groundfish fishery the owner and operator of each FFV must record and report additionally, the prohibited species herring (species code 209) which are discarded, to the nearest tenth of a metric ton (0.1 mt).

(f) *Initial inspection.* (1) An FFV reporting fish or fish products aboard in a BEGIN report required by § 611.4(c)(1) may be inspected prior to fishing within the FCZ. If the FFV will be inspected, notice of an inspection will be sent to the FFV within 24 hours after the transmission of the BEGIN report. Each FFV that will be inspected must not harvest or process fish in the FCZ until the inspection is completed by an authorized officer. If notice of an inspection is not sent to the FFV within 24 hours after transmission of the BEGIN report, the FFV may begin to harvest or process fish.

(2) It will be presumed that unreported fish or fish products were harvested in the FCZ unless the vessel has on board records of the amounts of fish and fish products caught outside the FCZ. The records must be in English and provide the same information required by § 611.9 (b) and (c).

(Approved by the Office of Management and Budget under control number 0648-0075)

(16 U.S.C. 971 *et seq.*; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1821, 1855.

[43 FR 59293, Dec. 19, 1978, as amended at 47 FR 10228, Mar. 10, 1982; 48 FR 34762, Aug. 1, 1983; 50 FR 35025, 35026, Aug. 28, 1985]

Effective Date Note: At 50 FR 35026, Aug. 28, 1985, effective October 28, 1985, § 611.90 was amended, by revising paragraph (e)(2), removing paragraph (f)(1), redesignating paragraph (f)(2) as (f)(1) and revising the newly redesignated paragraph (f)(1), and redesignating paragraph (f)(3) as (f)(2). For the convenience of the user, the superseded text is set forth below.

§ 611.90 General provisions.

* * * * *

(e) * * *

(2) *Cumulative catch log, weekly catch report, and weekly report of marine mammal incidental catch.* The requirements of § 611.9(d) that each vessel maintain a daily cumulative catch log, of § 611.9(e) that the weekly catch report be on a vessel-by-vessel basis, and of § 611.9(g) that the weekly report of marine mammal incidental catch be on a vessel-by-vessel basis are waived for fishing vessels that are not equipped with processing facilities and deliver all catches to a factory ship, provided that a consolidated cumulative catch log is maintained by the factory ship which accounts for all such fish received, and provided that the required data for the fishing vessels are consolidated and reported by the factory ship in the manner specified in § 611.9(d), (e), and (g).

(f) *Additional report.* (1) When transmitting the BEGIN notice required under § 611.4(a)(1), each foreign fishing vessel carrying fish and entering the fishery conservation zone (FCZ) seaward of the State of Alaska must declare the amount of fish and fish products on board which were caught or processed outside of the FCZ. An illustration of a sample report follows:

The stern trawler NAVIS, LTUX, will begin fishing on June 15, 1981, at 1500 G.m.t. at position 56 00 N. latitude, 168 00 W. longitude in Bering Sea Area I. The NAVIS has on board 105.5 metric tons (mt) of frozen Pacific cod, and 35 mt of fish meal that were produced from fish caught outside the FCZ. The required message would be transmitted as follows:

FROM: F/V NAVIS, LTUX
TO: 17th COAST GUARD DISTRICT, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0615/1500/5600N/16800W/51/BEGIN//PRODUCT
ABOARD/701/105.5/702/53/MEAL/35//

(2) If a vessel thus reporting fish or fish products onboard will be inspected, notice of an inspection shall be sent to the vessel within 24 hours after transmission of the BEGIN notice. Each vessel that will be inspected shall not harvest or process fish in the FCZ until the inspection is completed by an authorized officer. If notice of an in-

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spection is not sent to the vessel within 24 hours after transmission of the BEGIN notice and PRODUCT ABOARD reports, the vessel may begin to harvest or process fish.

* * * * *

§ 611.91 [Reserved]

§ 611.92 Gulf of Alaska groundfish fishery.

(a) *Purpose and scope.* (1) This section regulates foreign fishing for groundfish in the fishery conservation zone of the Gulf of Alaska, which includes that portion of the North Pacific Ocean beyond three nautical miles from the baseline used to measure the U.S. territorial sea, exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude. The regulatory areas and districts of the Gulf of Alaska are in Figure 1.

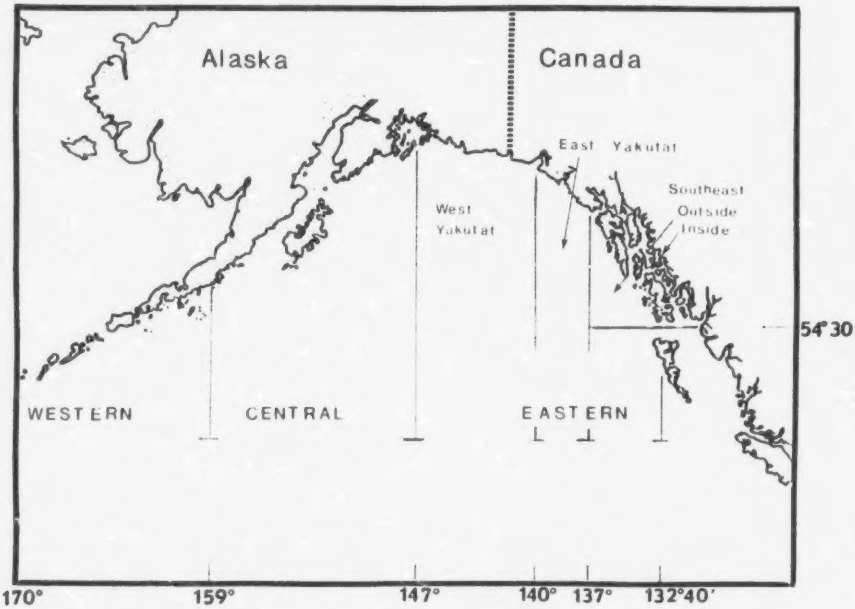

Figure 1 -- Regulatory Areas of the Gulf of Alaska (FMP)

(2) For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see 50 CFR Part 672.

(b) *Categories of species.* Four categories of species are recognized for regulatory purposes in this fishery.

(1) "Unallocated species" include shrimps, scallops, snails, Pacific herring, Pacific halibut, salmonids, King crab, Tanner crab, Dungeness crab, corals, surf clam, horsehair crab, and lyre crab. Except to the extent that their harvest is authorized under other regulations, the taking of these species must be avoided. When they are taken, they must be returned to the sea immediately, in accordance with 50 CFR 611.11. Taking of salmonids and halibut must be recorded and

reported by number of fish according to § 611.90(e)(2).

(2) "Target species" are the species that are commercially important and are generally targeted upon by the groundfish fishery. They include pollock, Pacific cod, flounders, Pacific Ocean perch, other rockfish, sablefish, Atka mackerel, squid, and thornyhead rockfish. Sufficient data on each species or species group exist for it to be managed separately from the others. Records of the catch of each target species or species group must be kept.

(3) "Other species" are species that currently have only slight economic value and are not generally targeted upon, but which are significant components of the ecosystem or have economic potential. These species include sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The optimum yield for these species as a category is set at 5 percent of the combined optimum yields of the target species. Records of the catch of other species must be kept.

(4) "Nonspecified species" include all fish other than those specifically listed in paragraphs (b)(1), (2), and (3) of this section. It is thus a residual category of species of no current or foreseeable economic value or ecological importance which are taken by the groundfish fishery as an accidental bycatch and are in no apparent danger of depletion. Nonspecified species may be either retained or discarded, and only records of the total amount retained, if any, must be kept.

These species categories and the species groups of which they are composed are set forth in Table I.

TABLE I—CATEGORIES OF SPECIES INVOLVED IN THE GULF OF ALASKA GROUNDFISH FISHERY

Unallocated species [1]	Target species [2]	"Other" species [3]	Nonspecified species [4]
Salmonids, Halibut, Herring, King Crab, Tanner Crab, Coral, Shrimp, Clams, Horsehair Crab, Lyre Crab, Scallops, Snails, Dungeness Crab, and Surf Clams.	Pollock, Cod, Flounders, Atka Mackerel, Sablefish, Pacific Ocean Perch, Thornyhead Rockfish, other Rockfish, and Squid.	Sculpins, Sharks, Skates, Eulachon, Smelts, Capelin, and Octopus.	All species not included in other three categories.

[1] Must be returned to the sea; records must be maintained as required by §§ 611.9 and 611.90(e)(2).

[2] Commercially important; sufficient data base to allow management based on biological, social, economic and ecological characteristics; specific OY applies to each species; records must be maintained.

[3] Slight economic value, greater economic potential or important ecosystem component, but insufficient data to allow discrete species management; records must be maintained of the aggregate catches.

[4] No current economic value, may be discarded or retained, but if retained records must be maintained of the aggregate retained catches.

(c)(1) *OYs, TALFFs and reserves.* (i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, shall publish a rule-related notice in the FEDERAL REGISTER, proposing initial apportionments of optimum yield (OY) for each species among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF). The preliminary specifications of DAP and JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. industry. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the exent to which U.S. processing and harvest will occur during the coming year. Public comments on these amounts will be invited by the Secretary for a period of 30 days after they are published in the FEDERAL REGISTER. Based on comments received, the Secretary will, by January 1 of the new fishing year, publish a second rule-related notice in the FEDERAL REGISTER which will show the final initial apportionment of each species' OY among DAP, JVP, reserve, and TALFF for the new fishing year. Species listed in paragraph (b)(1) and Table I of this section as "unallocated species," or species for which the TALFF is zero, will be treated as prohibited species in accordance with § 611.11.

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(ii)(A) *Apportionment of reserves.* (*1*) As soon as practicable after April 1, June 1, and August 1 and on such other dates as he determines necessary, the Secretary, after consultation with the Council shall reapportion to TALFF part or all of the reserve amounts in accordance with paragraph (c)(1)(ii)(C) of this section.

(*2*) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Secretary may apportion to DAH, in accordance with paragraph (c)(1)(ii)(C) of this section, any amounts of any Reserve that he determines to be needed to supplement DAH: April, June, and August.

(B) *Reapportionment of surplus DAH to TALFF.* As soon as practicable after April 1, June 1 and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, shall reapportion to TALFF any parts of the DAH that he determines will not be harvested by U.S. fishermen during the remainder of the year in accordance with paragraph (c)(1)(ii)(C) of this section.

(C) *Standards and procedure for apportionment—(1) General.* The Secretary shall apportion to TALFF under paragraphs (c)(1)(ii) (A) and (B) of this section only those amounts which he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, at the discretion of the Secretary either be apportioned to the estimate of DAH, or retained in the reserve as eligible for later apportionment under paragraph (c)(1)(ii) of this section.

(*2*) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (c)(1)(ii) (A) and (B) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Secretary shall consider the following factors, although the Secretary shall not be limited to these factors:

(*i*) Reported United States catch and effort by species and area compared to previously projected United States harvesting capacity;

(*ii*) Projected United States catch and effort by species and area for the remainder of the fishing year;

(*iii*) Amounts of fish, particularly United States harvested fish, already purchased or processed by United States fish processors during the fishing year, compared to previously projected processing capacity of U.S. processors;

(*iv*) Projected processing capacity, and utilization of that capacity for the processing of United States harvested fish, by United States fish processors for the remainder of the fishing year;

(*v*) Amounts of United States harvested fish already purchased or received by foreign fishing vessels, compared to previously projected levels of such purchase or receipt; and

(*vi*) The need to maintain orderly fisheries despite any misspecification of by-catch species amounts in mixed species fisheries.

(*3*) *Allocation of increases or decreases in DAH between DAP and JVP.* The Secretary shall allocate any increases or decreases in DAH amounts resulting from reapportionments under paragraphs (c)(1)(ii) (A) and (B) of this section between the DAP and JVP components of DAH.

(*4*) *Public comment.* (*i*) Comments may be submitted to the Regional Director concerning whether, and the extent to which, vessels of the United States will harvest reserve, DAP, or JVP amounts during the remainder of the fishing year; and whether, and the extent to which, U.S.-harvested groundfish can or will be processed by U.S. fish processors or by foreign fishing vessels. Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (c)(1)(ii) (A) or (B) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (c)(1)(ii) (A) or (B), the Secretary shall issue a FEDERAL REGISTER notice on the proposed apportionment and invite comments for a period of fifteen (15) days. If the

Secretary finds it necessary to reapportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of 15 days after the effective date of the apportionment. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and shall publish reponses to those comments in the FEDERAL REGISTER as soon as it is practicable.

(*ii*) The Secretary shall consider any timely comments submitted in accordance with this paragraph in determining whether and to what extent vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (c)(1)(ii) (A) and (B) of this section.

(*iii*) The Regional Director shall compile in aggregate form the most recent available reports on: level of catch and effort by vessels of United States fishing for groundfish taken in the Gulf of Alaska; and amounts of United States harvested groundfish taken in the Gulf of Alaska and processed by United States fish processors or delivered at sea to foreign fishing vessels. These data shall be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 15 days of each comment period.

(5) *Procedure.* As soon as practicable after each of the dates specified in, and each additional apportionment date selected under paragraph (c)(1)(ii) (A) or (B) of this section, the Secretary shall publish in the FEDERAL REGISTER:

(*i*) Reserve amounts to be apportioned to the TALFF or DAH; (*ii*) any DAH amounts to be apportioned to TALFF; (*iii*) the distribution of amounts apportioned to or from DAH between DAP and JVP; (*iv*) the reasons for any apportionments and their distributions and (*v*) responses to any comments received.

(2) *Fishing permitted.* (i) The catching in the Gulf of Alaska and retention of the amount of any groundfish for which a nation has an allocation is permitted, except in the following circumstances:

(A) When vessels of a nation have caught the amount of the allocation of that nation for any groundfish species (or species group, e.g. "other rockfish") in any regulatory area, fishing for groundfish in that regulatory area by vessels of that nation is prohibited, even if (*1*) allocations of other species for that nation in that regulatory area have not been reached, or (*2*) the nation has not received a notice issued pursuant to § 611.13(c) prohibiting fishing by vessels of that nation in that regulatory area; or

(B) On the effective date of a notice of closure issued by the Secretary pursuant to the procedures of § 611.13(c), fishing by vessels of that nation is prohibited for the groundfish species (or species groups), in the regulatory areas and during the periods stated in the notice; or

(C) As otherwise prohibited by this section.

(D) The provisions of paragraph (c)(2)(i)(A) of this section do not apply to foreign vessels fishing with longline gear unless the allocation reached is for Pacific cod or sablefish. However, when the area allocation of any groundfish species, or species group other than Pacific cod, or sablefish is reached, any subsequent catch of that species in that area by vessels fishing with longline gear shall be considered catch of a "prohibited species" and treated in accordance with the provisions of § 611.11. Catches of those species or species group in the target and other species categories that become prohibited species must be recorded and reported as required by §§ 611.4 and 611.9.

(E) A notice of closure issued pursuant to paragraph (c)(2) of this section shall not apply to any receipt or processing by foreign vessels of United States harvested fish authorized by a permit issued by the Department of Commerce under the Act. Receipt of U.S. harvested fish and the conduct of other operations in support of U.S. vessels by foreign fishing vessels in the management area may continue until specifically prohibited under the procedures prescribed in the applicable permit.

(ii) Each year, the Secretary shall issue a notice of closure pursuant to the procedures of § 611.13(c), prohibiting fishing with specified gear types for any groundfish species, species group, or species category in the applicable regulatory area or district by vessels subject to this section, when the Regional Director determines that one or more of the following catch limitations will be reached:

(A) OY for any groundfish species, species group, or species category, in a regulatory area or district: the Secretary shall issue a notice prohibiting, through December 31, fishing using trawl gear for groundfish in that regulatory area or district by vessels subject to this section, except that if the optimum yield for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary shall prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section through December 31;

(B) TALFF for any groundfish species, species group, or species category, in a regulatory area or district: the Secretary shall issue a notice prohibiting through December 31 fishing using trawl gear for groundfish in that regulatory area or district, except that if the TALFF for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary shall prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

(C) The allocation of a nation for any groundfish species, species group, or species category in a regulatory area or district: the Secretary shall issue a notice prohibiting through December 31 in that regulatory area or district, fishing using trawl gear for groundfish by vessels of that nation; and retention of that species, species group, or species category by vessels of that nation using longline gear. However, if a national allocation for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary shall prohibit fishing for groundfish in that regulatory area or district by all vessels of that nation through December 31.

(iii) When a notice has been issued pursuant to this subsection prohibiting fishing, vessels of a nation subject to this section may resume fishing in a regulatory area or district: (A) On the effective date of a notice issued pursuant to § 611.13(c) rescinding the notice of closure previously issued; or (B) when the time period stated in the notice of closure expires.

(d) *Open areas* (1) Except as prohibited in paragraph (e) of this section, foreign fishing for groundfish is permitted in the Gulf of Alaska beyond twelve nautical miles from the baseline used to measure the U.S. territorial sea, and between three and twelve nautical miles from the base line used to measure the U.S. territorial sea between 169°00' and 170°00' W longitude.

(2) In addition to the areas in which foreign fishing is permitted under paragraphs (d) and (e) of this section, foreign vessels holding Department of Commerce permits to receive United States harvested fish at sea may also receive only United States harvested fish and conduct other operations in support of U.S. vessels in areas where foreign fishing is prohibited if: (i) That area is beyond three nautical miles from the baseline used to measure the U.S. territorial sea; (ii) receipt of the U.S. harvested fish or conduct of such support operations by the foreign vessel is in an area and during a time when fishing by U.S. vessels being supported is permitted under 50 CFR Part 672; and (iii) receipt by the foreign vessel or conduct of such support operation in that area is not prohibited by the terms and conditions of that vessel's permit to receive U.S. harvested fish.

(e) *Closed areas*—(1) *All fishing.* Foreign fishing for groundfish is prohibited in the following portions of the management area:

(i) Between 132°40' W. longitude and 140°00' W. longitude; and

(ii) *"Davidson Bank":* between 163°04' W. longitude and 166°00' W. longitude north of 53°00' N. latitude.

(2) *Fishing with trawl gear.* Trawling for groundfish by vessels subject to

this section is prohibited in the following areas during the periods specified:

(i) 147° W. longitude to 157° W. longitude from February 16 to June 1.

(ii) The "Kodiak Gear Area" from two days prior to the opening of the king crab season (in Registration Area K of State of Alaska commercial king crab fishing regulations) through February 15. The Regional Director shall notify the designated representatives of each foreign nation of the opening date of the king crab season at least 4 days before that opening. This area is bounded by straight lines connecting points on shore to the following coordinates in the order listed:

North latitude	West longitude
57°25.2′ (shoreline, north side Wide Bay, Alaska Peninsula	156°19′
55°11′	156°19′
55°40′	155°17′
56°03′	153°45′
56°30′	153°00′
56°46′	152°20′
57°11′	151°14′
57°19′	150°57′
58°00′	150°00′
59°39.3′ (shoreline, Harris Bay, Kenai Peninsula)	150°00′

(iii) *Three "Kodiak halibut areas,"* from 5 days before until 5 days after the first opening of the U.S. halibut fishing season, if the first opening of that fishing season occurs after May 26 (as established by regulations of the International Pacific Halibut Commission).

(A) The three "Kodiak halibut areas", bounded respectively by rhumb lines, are described as follows:

(*1*) 58°30′ N. lat. to 59°30′ N. lat., between 147°40′ W. long. and 150°20′ W. long.

(*2*) 57°40′ N. lat. to 58°05′ N. lat., between 148°50′ W. long. and 150°30′ W. long.

(*3*) 55°30′ N. lat. to 56°25′ N. lat., between 155°45′ W. long. and 156°30′ W. long.

(B) The Regional Director shall give notification of the first opening date of the U.S. halibut fishing season to the designated representative of each foreign nation at least 7 days before the U.S. halibut fishing season first opens.

(3) *Fishing with longline gear*—(i) *General.* For the purpose of this section, "longline" means (A) a stationary, buoyed, and anchored line with hooks or pots attached, or (B) the taking of fish by means of such a device.

(ii) *Longline fishing for sablefish.* Longline fishing for sablefish by vessels subject to this section between 140° and 169° W. longitude is prohibited: (A) Landward of the 400 meter depth contour, from 0800 GMT May 1 to 0800 October 1; and (B) landward of the 500 meter depth contour, from 0800 GMT October 1 to 0800 GMT May 1.

(iii) *Longline fishing for Pacific cod.* Longline fishing for Pacific cod by vessels subject to this section between 140° and 169° W. longitude is prohibited landward of the 400 meter depth contour during the halibut fishing seasons as established by regulations of the International Pacific Halibut Commission. The Regional Director shall give notification of the opening and closing dates of the U.S. halibut fishing seasons to the designated representative of each foreign nation, at least 7 days before the opening and closing dates of the U.S. halibut fishing seasons.

(f) *Gear restrictions*—(1) *Vessels using trawl gear.* Vessels subject to this section may use only pelagic trawls (trawls in which neither the net nor the otter boards operate in contact with the seabed) equipped with recording net-sonde devices functioning properly during each tow from January 1 through December 31 in the area between 140° W. longitude and 147° W. longitude, and from December 1 through May 31 between 147° W. longitude and 170° W. longitude.

(i) The footrope of the net must not be in contact with the seabed for more than 10 percent of any tow, as inidcated by the net-sonde readout.

(ii) Vessels subject to this section must not attach to a pelagic trawl any protective device (such as chafing gear, rollers, or bobbins) which would make it possible to fish on the seabed.

(2) *Vessels using longline gear.* Vessels subject to this section shall not use gear other than longline gear

when conducting a directed fishery for:

(i) Sablefish; or

(ii) Pacific cod in the area which is both west of 157° west longitude and landward of the 500 meter depth contour.

(g) *Time and area closures*—(1) *Field orders.* (i) Field orders issued by the Secretary under this part must include the following information: (A) A description of the area to be opened or closed; (B) the effective date and any termination date of such opening or closure; and (C) the reason for the opening or closure.

(ii) No field order issued under this section may take effect until—(A) it has been filed for public inspection with the Office of the Federal Register, and (B) the foreign nations concerned and the designated representatives for the affected foreign fishing vessels are notified. If practicable, notification of a field order will be given to foreign nations concerned and to the designated representative for affected foreign fishing vessels at least 48 hours before the field order is to be effective; and (C) the public has been offered the opportunity to comment upon the Secretary's proposed findings and order of modification for a period of at least thirty (30) days, unless the Secretary finds that such prior opportunity for public comment would adversely affect the conservation of groundfish or unallocated species.

(iii) *Determinations.* Any adjustment under this paragraph must be based on a determination by the Regional Director that—(A) the condition of any groundfish or Pacific halibut stock in any portion of the Gulf of Alaska is substantially different from the condition anticipated at the beginning of the fishing year, and (B) such differences reasonably support the need for inseason conservation measures to protect groundfish or Pacific halibut stocks.

(iv) *Data.* Fishery and observer data reported inseason that relate to one or more of the following factors may be considered in making this determination: (A) The effect of overall fishing effort within a regulatory area, (B) catch per unit of effort and rate of harvest, (C) relative abundance of stocks within the area, (D) amount of Pacific halibut being caught, (E) condition of stock within the area, and (F) any other factors relevant to the conservation and management of the groundfish or Pacific halibut resource.

(v) *Procedure.* (A) The Secretary shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(B) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries, P.O. Box 1668, Juneau, Alaska 99802.)

(C) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(D) If comments are received during the 15-day period, the Secretary shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration shall either (*1*) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received, or (*2*) modify or rescind the adjustment.

(h) *Additional statistical report—Annual.* In addition to the requirements of §§ 611.4 and 611.9, each nation whose fishing vessels fish subject to this section shall submit a written annual report to the Regional Director setting forth catch and effort statistics regarding fishing activities conducted under this section during the annual period from January 1 through December 31 by May 31 of the following year. A two-month report will be required by May 31, 1981, for the period November 1 through December 31, 1980.

(1) Foreign vessels fishing with trawl gear shall report:

(i) *Effort* in hours trawled and number of days fished, by vessels class, by gear type, by month, by 1.2° (lat.) x 1° (long.) fishing area;

(ii) *Catch* in metric tons, by vessel class by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the following species categories: yellowfin sole, rock sole, flathead sole, arrowtooth flounder, other flounders, Pacific ocean perch, other rockfish, thorneyhead rockfish, Pacific cod, sablefish (blackcod), walleye (Alaska) pollock, Atka Mackerel, squid, any other species taken in excess of 1,000 metric tons, and other fishes.

(2) Foreign fishing vessels fishing with longline gear shall report:

(i) *Effort* in number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area; and

(ii) *Catch* in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the species categories listed in paragraph (g)(1)(ii) of this section.

(Approved by the Office of Management and Budget under control number 0648-0075)

[46 FR 73494, Nov. 5, 1980, as amended at 46 FR 49129, Oct. 6, 1981; 47 FR 23938, 23939, June 2, 1982; 47 FR 44265, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983; 48 FR 43048, Sept. 21, 1983; 50 FR 35026, Aug. 28, 1985]

EFFECTIVE DATE NOTES:

1. At 50 FR 29686, July 22, 1985, an emergency interim rule was issued amending § 611.92 by suspending paragraphs (b)(2), (c)(2)(i) (A), (D), and (E), (c)(2)(ii) (A), (B), and (C), (e)(3)(ii), and (f)(2)(i) from July 17, 1985 until October 15, 1985. New paragraphs (b)(5), (c)(2)(i) (F), (G), (H), and (I), (c)(2)(ii) (D), (E), (F), (G), and (H), and (i) were added, effective from July 17, 1985 until October 15, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(b) * * *

(5) "Target species" are the species that are commercially important and are generally targeted on by the foreign and domestic groundfish fisheries. They include pollock, Pacific cod, flounders, Pacific ocean perch, "other rockfish", sablefish, Atka mackerel, squid, and thornyhead rockfish. Sufficient data on each species or species group exist for it to be managed separately from the others. Records of the catch of each target species or species group must be kept. Pacific ocean perch, "other rockfish", and sablefish are prohibited to foreign vessels, and must be treated in accordance with paragraph (i) of this section and § 611.13 of this part.

(c) * * *

(2) * * *

(i) * * *

(F) When vessels of a nation have caught their applicable share of a prohibited species catch limit provided for by paragraph (i) of this section for sablefish, Pacific ocean perch, or "other rockfish", fishing by vessels of that nation is prohibited in that regulatory area.

(G) When vessels of a nation have caught the amount of the allocation of that nation for any groundfish species or species group in any regulatory area, fishing for groundfish using other than longline gear in that regulatory area by vessels of that nation is prohibited, even if allocations of other species for that nation in the regulatory area have not been reached or the nation has not received a notice issued under § 611.15(c) prohibiting fishing by vessels of that nation in that regulatory area.

(H) When the area allocation of any groundfish species or species group other than Pacific cod is reached, unless the fishery is closed under other provisions of this section, any subsequent catch of that species in that area by vessels fishing with longline gear will be considered catch of a prohibited species and treated in accordance with the provisions of § 611.13. Catches of those species or species groups in the target and "other species" categories that become prohibited species must be recorded and reported as required by § 611.9.

(I) A notice of closure issued under paragraph (c)(2) of this section will not apply to any receipt or processing by foreign vessels of U.S.-harvested fish authorized by a permit issued by the Department of Commerce under the Act, unless the Secretary has issued a notice prohibiting through December 31 further receipt of groundfish from U.S. vessels under paragraph (c)(2)(ii)(G) of this section.

(ii) * * *

(D) OY for any groundfish species, species group, or species category in a regulatory area or district: the Secretary will issue a notice prohibiting through December 31 fishing using trawl gear for groundfish in that regulatory area or district by vessels subject to this section unless a prohibited species catch limit for that species, species group, or species category has not yet been reached; except that if the OY for Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section through December 31.

(E) TALFF for any groundfish species, species group, or species category in a regulatory area or district: the Secretary will issue a notice prohibiting through December 31 fishing using trawl gear for groundfish in that regulatory area or district, except that if the TALFF for Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section through December 31.

(F) The allocation of a nation for any groundfish species, species group, or species category in a regulatory area or district: the Secretary will issue a notice prohibiting through December 31 in that regulatory area or district, fishing using trawl gear for groundfish by vessels of that nation; and retention of that species, species group, or species category by vessels of that nation using longline gear. However, if a national allocation for Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels of that nation through December 31.

(G) The prohibited species catch limit share of a nation for sablefish, Pacific ocean perch, or "other rockfish" in a regulatory area: the Secretary will issue a notice prohibiting through December 31 further fishing by vessels of that nation in that regulatory area.

(H) The prohibited species catch limit for U.S. vessels engaged in joint venture fisheries for sablefish and Pacific ocean perch in a regulatory area: the Secretary will issue a notice prohibiting through December 31 further receipt of groundfish by foreign vessels from U.S. vessels in that regulatory area.

* * * * *

(i) *Prohibited species catch (PSC) limits.* (1) When during any fishing year the vessels of a nation have taken incidentally that nation's current share of the PSC for sablefish, Pacific ocean perch, or "other rockfish" in a regulatory area as determined under paragraph (i)(2) of this section, the entire regulatory area will be closed to vessels of that nation for the remainder of the fishing year or until an increase in that nation's groundfish allocation results in a corresponding increase in its current share of PSC for sablefish, Pacific ocean perch, or "other rockfish" not to exceed the total amounts specified below and in § 672.21 of this chapter.

PSCs BY REGULATORY AREA

[Metric tons]

Sablefish:	
Western	140
Central	31
Pacific ocean perch:	
Western	30
Central	16
Rockfish: Entire gulf	25

(2) At any time during the fishing year the total PSC available to foreign nations in a regulatory area for sablefish, Pacific ocean perch, or "other rockfish" is equal to amounts set forth in § 672.21 of this chapter.

(3) A nation's current share of a PSC for sablefish, Pacific ocean perch, or "other rockfish" at any time during the fishing year is determined by multiplying the PSC set forth in § 672.21 of this chapter by the ratio of that nation's current allocation of groundfish to the current groundfish TALFF plus the current pollock reserve, according to the following equation:

Nation's PSC share = PSC × [Nation's current groundfish allocation/(current TALFF + current pollock reserve)]

Hence, the total PSCs set forth in § 672.21 of this chapter will not be distributed to nations until (1) all the pollock reserve is reduced to zero, by apportioning it either to DAH or to TALFF; and (2) all TALFF is apportioned to nations.

2. At 50 FR 35026, Aug. 28, 1985, effective October 28, 1985, § 611.92 was amended by revising the fourth sentence in paragraph (b)(1). For the convenience of the user, the superseded text is set forth below.

§ 611.92 Gulf of Alaska Groundfish fishery.

* * * * *

(b) * * *

(1) * * * Taking of salmonids and halibut must be recorded and reported, in accordance with 50 CFR 611.9.

* * * * *

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

(a) *Purpose.* (1) This section regulates foreign fishing for squid, octopus, and all species of finfishes except salmon, Pacific halibut, herring, and steelhead, within that portion of the Bering Sea, and that portion of the North Pacific Ocean adjacent to the Aleutian Islands west of 170° W. longitude, over which the United States exercises exclusive fishery management authority under the Act (hereinafter referred to in this section as the "management area"). See Appendix C to Subpart A, Figure 4.

(2) For regulations governing fishing in the Bering Sea and Aleutian Islands groundfish fishery by vessels of the United States, see 50 CFR Part 675. Regulations governing foreign fishing for snails are set forth in 50 CFR 611.94.

(3) The optimum yield for the fishery regulated by this section and by 50 CFR Part 675 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the management area to the extent this amount can be harvested consistently with this part and 50 CFR Part 675, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. For a definition of the categories of species involved in the fishery, see Table 1 of this section.

(b) *Authorized fishery.* (1)(i) See 50 CFR Part 675, Subpart B, for procedures to determine total allowable catch (TAC), reserve, domestic annual harvest (DAH), and total allowable level of foreign fishing (TALFF).

(ii) *Categories of species.* Five categories of species are recognized for regulatory purposes in this fishery. They are set forth in Table 1.

TABLE I—CATEGORIES OF SPECIES INVOLVED IN THE BERING SEA AND ALEUTIAN ISLANDS FISHERY

Unallocated species [1]	Target species [2]	Other species [3]	Non-specified species [4]	Groundfish
Salmonids, Halibut, Herring, King Crab, Tanner Crab, Coral, Shrimp, Horsehair Crab, Lyre Crab, Scallops, Snails, Dungeness Crab, Surf Clams.	Pollock, Cod, Other flat fishes, Atka Mackerel, Sablefish, Turbots, Squid, Pacific Ocean perch, other rockfish, Yellowfin sole.	Sculpins, Sharks, Skates, Eulachon, Smelts, Capelin, Octopus.	All species not included in previous categories	Target, "other", and nonspecified species

[1] Records must be maintained as required by §§ 611.9 and 611.90(e)(2).
[2] Records must be maintained.
[3] Records must be maintained of the aggregate catches.
[4] If non-specified species are retained, records must be maintained of the aggregate retained catches.

(A) The term "unallocated species" means for purposes of this section: shrimps (Pandalidae); scallops (Pactinidae); snails (Gastropoda), Pacific herring (*Clupea harengus pallasi*); salmonids (Salmonidae), Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes* spp.), Tanner crab (*Chionoecetes opilio, C. bairdi*); Dungeness crab (*Cancer magister*); corals (Coelenterata); surf clam (*Spisula solidissima*); horsehair crab (*Erimacrus isenbeckii*); and lyre crab (*Hyas lyratus*). Foreign allocations for these species exists, if at all, only under other fishery management plans.

(B) The term "other species" means: sculpins, sharks, skates; eulachon; smelts, capelin; and octopus.

(C) The term "nonspecified species" means all fish other than those specifically listed in paragraphs (b)(1)(ii) (A), (B), and (D) of this section.

(D) The term "target species" means pollock, Pacific cod, all flatfishes, Atka mackerel, sablefish, all rockfishes, and squids.

(E) "Groundfish" includes all fish listed in paragraphs (b)(1)(ii) (B), (C), and (D) of this section.

(2) For apportionment to TALFF of Reserves and surplus DAH, see 50 CFR Part 675, Subpart B.

(3) *Fishing permitted.* (i) The catching in the management area and retention of any groundfish for which a nation has an allocation is permitted, except as provided in this section.

(ii) Under the procedures of § 611.13(c), the Regional Director shall notify the foreign nation(s) involved and the designated representative for any affected fishing vessel of a closure prohibiting fishing with specified gear types for any species or species group. The closure may be for all or part of the management area.

(A) *Attainment of quota.* If the amount of "other species" or any target species, except sablefish, turbots, or Pacific cod, that is apportioned to the fishery will be reached, the Secretary shall prohibit foreign trawling in all or part of the management area until January 1. If the amount of sablefish, turbots, or Pacific cod that is apportioned to the fishery will be reached, the Secretary shall prohibit all foreign harvesting in all or part of the management area until January 1.

(B) *Total allowable level of foreign fishing.* If the total allowable level of foreign fishing (TALFF) for any species or species group except sablefish, turbots, or Pacific cod will be reached, the Regional Director shall prohibit fishing using trawl gear by foreign vessels. If the TALFF for sablefish, Pacific cod, or turbots will be reached, the Regional Director shall prohibit fishing for groundfish by foreign vessels.

(C) *Allocation of a nation.* If the allocation of a nation for any species or species group except sablefish, turbots, or Pacific cod will be reached, the Regional Director shall prohibit fishing using trawl gear by that nation. If the nation's allocation of sablefish, Pacific cod, or turbots will be reached, the Regional Director shall prohibit fishing for groundfish by all vessels of that nation.

(iii) On the effective date of a notice of closure from the Regional Director under the procedures of § 611.13(c), fishing by vessels of that nation is prohibited for the groundfish species or species groups, in the areas and during the periods stated in the notice. A notice of closure issued pursuant to paragraph (b)(3) of this section shall not apply to any receipt or processing by foreign vessels of United States-harvested fish which is authorized by permit issued by the Department of Commerce under the Act. Foreign receipt and processing of U.S. harvested fish may continue until specifically prohibited under the restrictions prescribed in the applicable permit.

(iv) A notification pursuant to paragraph (b)(3)(ii) of this section shall expire: (A) On the effective date of a notification issued pursuant to § 611.13(c) rescinding that previous notice; (B) when the time period stated in that notice expires; or (C) at midnight, Alaska Standard Time, on the following December 31, whichever is earlier.

(4) *Fishing prohibited.* Whether or not a nation receives a notice under paragraph (b)(3) of this section, fishing for groundfish by trawl vessels of a nation is prohibited when that nation's national allocation for any groundfish species is reached; and fishing for groundfish by all vessels of a nation is prohibited when that nation's national allocation for sablefish, Pacific cod, or turbots is reached.

(c) *Open and closed areas*—(1) *General.* Foreign fishing for groundfish may be conducted beyond 12 nautical miles from the baseline used to measure the territorial sea in the entire management area, except as prohibited in this paragraph. No foreign vessels may engage in fishing within 12 nautical miles of the baseline used to measure the territorial sea, unless authorized in this paragraph.

(2) *Trawling.* (i) Trawling by foreign vessels between 3 and 12 nautical miles from the baseline used to measure the territorial sea is allowed (A) at all times in the area bounded by 170°00′ W. and 172°00′ W. longitude south of the Aleutians and between 170°30′ W. and 172°00′ W. longitude north of the Aleutians, (B) on Petrel Bank from July 1 through December 31, and (C) from May 1 through December 31 in other areas west of 178°30′ W. longitude. Petrel Bank is bordered by straight lines connecting the following coordinates in the order listed:

Latitude	*Longitude*
52°51′ N.	178°30′ W.
52°51′ N.	179°00′ E.
51°15′ N.	179°00′ E.
51°15′ N.	178°30′ W.
52°51′ N.	178°30′ W.

(ii) Trawling is prohibited in the areas and during the periods which follow:

(A) At all times in the Bristol Bay "Pot Sanctuary" which is the area enclosed by straight lines from Cape Sarichef light at 54°36′ N. latitude, 164°55′42″ W. longitude; to 55°16′ N. latitude, 166°10′ W. longitude; to 56°20′ N. latitude, 163°00′ W. longitude; to 57°10′ N. latitude, 163°00′ W. longitude; to 58°10′ N. latitude, 160°00′ W. longitude; then due south along 160°00′ W. longitude to the Alaska Peninsula.

(B) At all times in the area between 172° W. longitude and 178°30′ W. longitude and south of a line connecting the following coordinates in the order listed: 53°14′ N. latitude, 172°00′ W. longitude; 52°13 N. latitude, 176°00′ W. longitude; 52°00′ N. latitude, 178°00′ W. longitude; and 52°00′ N. latitude, 178°30′ W. longitude.

(C) From December 1 through May 31 in the area bounded by straight lines connecting the following coordinates in the order listed: 54°36′ N. latitude, 164°55′42″ W. longitude (Cape Sarichef light); 52°48′ N. latitude, 170°00′ W. longitude; 55°30′ N. latitude, 170°00′ W. longitude; 55°30′ N. latitude, 166°47′ W. longitude, 56°00′ N. latitude, 167°45′ W. longitude; 56°00′ N. latitude, 166°00′ W. longitude; 56°30′ N. latitude, 166°00′ W. longitude; 56°30′ N. latitude, 163°00′ W. longitude; 56°20′ N. latitude, 163°00′ W. longitude; 55°16′ N. latitude, 166°10′ W. longitude, 54°36′ N. latitude, 164°55′42″ W. longitude (Cape Sarichef light).

(D) From January 1 through June 30 in the area known as Petrel Bank, described in paragraph (c)(2)(i) of this section.

(E) Prohibited species catch (PSC) limits—(*1*) *Salmon.* (*i*) During any fishing year, that portion of fishing area 51 lying between 55° N. and 57° N. latitude and 165° W. and 170° W. longitude and all of fishing area 52 may be closed for the remainder of the periods January 1 through March 31 and October 1 through December 31 to trawl vessels of any nation. This closure will occur when vessels of a nation have intercepted an amount of salmon which exceeds by 10 percent that nation's portion of the salmon prohibited species catch (PSC) established for the current fishing year (Table 2), or when vessels of that nation have intercepted an amount of salmon in any consecutive three-year period which exceeds the sum of that nation's portion of the salmon PSC established for those three years. Any salmon caught incidentally by vessels of that nation in the area which remains open will be applied against its portion of the following year's salmon PSC. Fishing areas 51 and 52 are described in Appendix C to Subpart A, paragraph C, and Figure 4.

TABLE 2—TARGET REDUCTION SCHEDULE OF SALMON PROHIBITED SPECIES CATCHES BASED ON THE AVERAGE 1977-80 FOREIGN TRAWL SALMON INCIDENTAL CATCH

Year	Total salmon [1]
Base No. 1977-80	80,000
Reduced catch levels:	
(1981)	69,893
(1982)	59,409
(1983)	48,925
(1984)	38,441
(1985)	27,957
(1986)	17,473

[1] Total salmon numbers are calculated on the assumption that 93% of the incidentally-caught salmon are chinook.

(*ii*) A nation's initial portion of the salmon PSC for a fishing year will be determined by multiplying the total salmon PSC for that year by the ratio of that nation's initial groundfish allocation to the total initial TALFF plus reserves for groundfish:

> Nation's initial salmon PSC equals total salmon PSC multiplied by nation's initial groundfish allocation divided by total initial groundfish TALFF and reserve.

At the beginning of the fishing year, a portion of the salmon PSC will not be distributed to nations, because groundfish reserves will not yet be apportioned and some of the initial TALFF may not yet be allocated. This remaining portion of the salmon PSC will be subsequently distributed to nations in proportion to increases in their groundfish allocations which result from the apportionment of the initial unallocated TALFF and groundfish reserves.

(*2*) *Pacific halibut, king crab, and Tanner crab.* (*i*) When during any fishing year the trawl vessels of a nation have taken incidentally that nation's current portion of the PSC for Pacific halibut, king crab, or Tanner crab, the entire management area will be closed to trawling by vessels of that nation for the remainder of that fishing year or until that nation's groundfish allocation is increased. Any increase in a nation's groundfish allocation will result in a corresponding increase in its current portion of PSC for Pacific halibut, king crab, and Tanner crab.

(*ii*) For any year (year i), the PSC_{ij}s for each of these species (species j) are based upon the incidental catch rates (R_{ij}) shown in Table 3:

PSC_{ij} equals R_{ij} multiplied by the total groundfish TALFF. Using this formula, the PSC for Pacific halibut, king crab, and Tanner crab will increase in proportion to increases in the total TALFF which result from the apportionment of groundfish reserves or surplus DAH to TALFF under paragraph (b)(2) of this section.

(*iii*) A nation's current portion of the PSC_{ij}s for Pacific halibut, king crab, and Tanner crab, at any time during the fishing year, is determined by multiplying that nation's current groundfish allocation by R_{ij}:

Nation's PSC_{ij} equals R_{ij} multiplied by a nation's groundfish allocation.

TABLE 3—Incidental Catch Rate Reductions for Pacific Halibut, King Crab, and Tanner Crab, Based on the Average 1977-80 Foreign Trawl Groundfish and Prohibited Species Catches

Year	Halibut [1]	King Crab [2]	Tanner Crab [2]
BASE CATCH RATES			
1977-80	3,182	916,804	16,003,329
Average Base	[3] 1,301,250 R=0.00245	[4] 1,301,250 R=0.70456	[5] 1,301,250 R=12.29843
RATE REDUCTION SCHEDULE, R AND R AS PERCENTAGE OF BASE R (Percent)			
(1981)			
(1982)	R=.00220 90%	R=.66933 95%	R=11.6840 95%
(1983)	R=.00196 80%	R=.63410 90%	R=11.0686 90%
(1984)	R=.00171 70%	R=.59887 85%	R=10.4537 85%
(1985)	R=.00147 60%	R=.56365 80%	R=9.8387 80%
(1986)	R=.00122 50%	R=.52842 75%	R=9.2238 75%

[1] Metric tons per metric ton of groundfish.

[2] Number of individuals per metric ton of groundfish.

[3] Base R=0.00245.

[4] Base R=0.70456.

[5] Base R=12.29843.

(3) *Longlining.* (i) Longlining by foreign vessels between 3 and 12 nautical miles from the baseline used to measure the territorial sea is allowed west of 170°00′ W. longitude.

(ii) When U.S. observer information or other reliable reported statistics indicate that foreign longline vessels have intercepted 105 mt of Pacific halibut in the entire management area during the 12-month period June 1 through May 31, the Regional Director shall prohibit further longlining by foreign vessels from that day forward or from December 1, whichever comes later, through May 31, in waters less than 500 meters deep in the area designed under paragraph (c)(2)(ii)(C) of this section. Notice of this prohibition will be given according to procedures specified in § 611.15(c).

(4) *Receipts of fish at sea.* Foreign fishing vessels holding permits to receive U.S.-harvested fish may receive those fish in the management area between 3 and 12 nautical miles from the baseline from which the United States territorial sea is measured. Receiving foreign-harvested fish in the 3 to 12 mile area is prohibited, except: (i) When the foreign vessel delivering the foreign-caught fish is authorized to harvest fish in the 3 to 12 mile area, or (ii) in the support operations areas designated in § 611.90(c)(2).

(d) *Additional reporting requirements*—(1) *Vessel reporting.* During the period from September 1 through April 30, and for the purposes of the requirements of 50 CFR 611.4(c) only, the area bounded by the following coordinates is a "fishing area" for all foreign trawl vessels fishing for groundfish under this § 611.93: 58° N. latitude, 175° W. longitude; 58° N. latitude, 172° W. longitude, 59°30′ N. latitude, 172° W. longitude, 59°30′ N. latitude, 175° W. longitude. (See Appendix C to Subpart A, Figure 4).

(2) *Reports and recordkeeping.* (i) In addition to the requirements of §§ 611.4 and 611.9, the operator of each foreign fishing vessel fishing for groundfish in the management area and each nation whose vessels fish for

groundfish in the management area shall also comply with all the requirements of § 611.90(e)(2) for the prohibited species herring (code 209), even though discarded, and for non-specified species which are retained, by weight of fish to the nearest 1/10 (tenth) of a metric ton.

(ii)(A) During the period September 1 through April 30, and in addition to the requirements of §§ 611.4 and 611.9, each foreign nation shall submit, through the designated representative, a weekly report stating any catch of herring by trawl vessels in the area described in § 611.90(d)(1).

(B) The weekly report shall contain the following information:

(*1*) Name of vessel;

(*2*) Permit number;

(*3*) Effort in hours trawled, by each weekly reporting period, by vessel, by ½° (latitude) × 1° (longitude) of area fished;

(*4*) Catch of herring (code 209) to the nearest ¹⁄₁₀ (one-tenth) of a metric ton, by vessel, by each weekly reporting period, by ½° (latitude) × 1° (longitude) of area fished.

(C) The weekly report shall be received from the designated representative by the Director, Alaska Region (National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, Telex No. 009945-377), at the times specified in § 611.4(g), and in the format specified by the Director, Alaska Region.

(3) *Annual report.* Each nation whose vessels fish for groundfish in the management area shall report, by May 30 of the following year, annual catch and effort statistics as follows:

(i) Effort in hours trawled, number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° latitude and 1° longitude statistical area; and

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° latitude and 1° longitude statistical area, by the following species categories: yellowfin sole; rock sole; flathead sole; arrowtooth flounder; greenland halibut; other flounders; Pacific Ocean perch; Pacific cod, sablefish (blackcod); walleye (Alaska) pollock; Atka mackerel; any other species taken in excess of 1,000 metric tons; "other species," and retained "non-specified species."

(e) *Inseason management decisions*—(1) *Field orders.* (i) Any field order issued by the Secretary under this section will include the following:

(A) The Secretary's findings required by paragraph (e)(2) of this section;

(B) A description and order of the modification of time and area limitations, based upon the Secretary's findings; and

(C) The effective dates of the modification.

(ii) No field order issued under this section may take effect until:

(A) It has been filed for publication with the FEDERAL REGISTER;

(B) The foreign nations concerned and the designated representatives for affected foreign fishing vessels are notified. If practicable, notification shall be given at least 48 hours before the field order is to be effective; and

(C) The public has been offered the opportunity to comment upon the Secretary's proposed findings and order of modification for a period of at least thirty (30) days, unless the Secretary finds that such prior opportunity for public comment would adversely affect the conservation and management of groundfish or unallocated species.

(iii) If the Secretary finds that prior opportunity for public comment on the proposed findings and order of modification would adversely affect the conservation and management of groundfish or unallocated species, he will receive public comments on the field order for thirty (30 days) after its effective date, making available to the public during business hours the aggregate data on which it was based. After considering the comments received, the Secretary will determine whether the field order should be changed.

(iv) Any modification prescribed by a field order issued under this section will remain in effect in accordance with the terms of the field order, or of any subsequent field order which may be issued under this section.

(2) *Prohibited species catch (PSC) limits.* (i) The PSCs or incidental catch rates for salmon, Pacific halibut, king crab, and Tanner crab established in paragraph (c)(2)(ii)(E) of this section will be reviewed annually by the Secretary, in consultation with the North Pacific Fishery Management Council, in order to respond to changes in relevant circumstances, including the following:

(A) Changes in the stock condition and abundance of prohibited species;

(B) Changes in the stock condition and abundance of target groundfish species, except that such changes will not be considered relevant to the salmon PSC except in the course of a full and complete review of the salmon PSC reduction program to be conducted during 1983;

(C) Changes in the degree of socioeconomic impact of prohibited species catches on the domestic fisheries dependent on those species; and

(D) Changes in the impact of PSCs on the opportunity of foreign fisheries to take their groundfish allocations.

(ii) Based upon the most recent scientific and technical information available, and prior to the beginning of the fishing year, the Secretary may issue a field order under paragraph (e)(1) of this section to adjust the PSC's or incidental catch rates for salmon, Pacific halibut, king crab, and Tanner crab after consultation with the North Pacific Fishery Management Council under paragraph (e)(2)(i) of this section and after he has considered all of the following in descending order of priority and issued relevant findings:

(A) The need to protect prohibited species for biological and other conservation reasons;

(B) The impact of PSC regulations on the domestic fisheries dependent on prohibited species;

(C) The impact of the PSC regulations on development and operation of domestic groundfish fisheries; and

(D) The impact of PSC regulations on the foreign groundfish fisheries.

(iii) The Regional Director will notify a nation when its portion of the PSC for salmon, Pacific halibut, king crab, or Tanner crab, as established under paragraph (c)(2)(ii)(E) of this section, is approached, so that voluntary efforts by vessels of that nation may reduce the incidental catch of these species. When a nation's portion of the PSC for salmon, Pacific halibut, king crab, or Tanner crab is reached, the Regional Director shall notify the foreign nation and the designated representatives for affected foreign fishing vessels of the resulting time-area restriction under paragraph (c)(2)(ii)(E) of this section. If practicable, such notification will be given at least 48 hours prior to the restriction. After a nation has caught its portion of the PSC for Pacific halibut, king crab or Tanner crab, the Regional Director may by field order allow a selected portion of that nation's fishing fleet to continue fishing under specified conditions until that nation's groundfish allocation is reached, although any additional incidental catch of prohibited species by vessels which have been allowed to continue fishing will be considered when establishing future PSC limits for that nation. The Regional Director will take into account the following considerations when making such allowance and will issue relevant findings.

(A) The risk of biological harm to prohibited species stocks and of socioeconomic harm to authorized prohibited species users posed by continued trawling by the selected elements;

(B) The extent to which the selected elements have avoided incidental prohibited species catches up to that point in the fishing year;

(C) The confidence of the Regional Director in the accuracy of the estimates of prohibited species catch by the selected elements up to that point in the fishing year;

(D) Whether observer coverage of the selected elements is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in the elements' prohibited species catch; and

(E) The enforcement record of owners and operators of vessels included in the selected elements and the confidence of the Regional Director that adherence to prescribed condi-

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tions can be assured in light of available enforcement resources.

(The reporting requirements in paragraph (d) were approved by the Office of Management and Budget under control number 0648-0075)

[46 FR 63304, Dec. 31, 1981, as amended at 48 FR 21337, 21338, May 12, 1983; 48 FR 24720, June 2, 1983; 48 FR 30395, July 1, 1983; 48 FR 34762, Aug. 1, 1983; 48 FR 34963, Aug. 2, 1983; 48 FR 41424, Sept. 15, 1983; 49 FR 400, Jan. 4, 1984; 49 FR 2472, Jan. 20, 1984; 49 FR 3190, Jan. 26, 1984; 49 FR 44757, Nov. 9, 1984; 50 FR 35026, Aug. 28, 1985]

§ 611.94 Snail fishery.

(a) *Purpose.* This section regulates foreign fishing for snails (all species of the genera *Neptunea, Fusitriton, Buccinum, Beringius, Volutopsius, Clinopegma, Plicifusus,* and *Pyrulofusus*) in the Bering Sea.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *TALFF, DAH, DAP, JVP, Reserve.* The annual total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and reserve for snails for each calendar year are published in the FEDERAL REGISTER. Current amounts are also available from the Regional Director.

(3) *Closures.* The taking of snails for which nation has an allocation is permitted provided that the fishery has not been closed pursuant to § 611.15.

(c) *Area, gear, and other restrictions.* No foreign fishing vessel may:

(1) Fish for snails east of 164° W. long., or within twelve miles of the baseline used to measure the territorial sea;

(2) Fish for snails using gear other than pots; or

(3) Retain in the snail fishery any species other than snails.

(d) *Additional statistical report.* Each nation whose vessels engage in this fishery shall report, by May 30 of the following year, annual catch and effort statistics as follows: *Effort* in number of pots hauled and hours pots soaked, by month, by ½° (lat.) x 1° (long.) statistical area; *Catch* in metric tons of edible meat, by month, by ½° (lat.) x 1° (long.) statistical area.

(Approved by the Office of Management and Budget under control number 0648-0075)

[43 FR 59293, Dec. 19, 1978, as amended at 47 FR 44266, Oct. 7, 1982; 48 FR 34762, Aug. 1, 1983]

EFFECTIVE DATE NOTE: At 50 FR 34979-35023, Aug. 28, 1985, §§ 611.1 through 611.16 (Subpart A) and §§ 611.20 through 611.22 (Subpart B) were revised, effective October 28, 1985, with the following exceptions, which will become effective January 1, 1986:

a. In § 611.5(c)(1) (ii) and (iii) and (c)(2) (ii), and (iii), the requirement for deployed gear to have "a light visible for two miles in good visibility, and a radio buoy;"

b. All of § 611.6(b) [the old § 611.6(e) remains in effect until superseded by this regulation];

c. All of § 611.6(d)(3) [the old § 611.6(c)(3) remains in effect until superseded by this regulation]; and

d. All of § 611.9 [the old § 611.9 (a) through (d), (h) and (i) and Appendix III to § 611.9 remain in effect until superseded by this regulation].

For the convenience of the user, the text remaining in effect until October 28, 1985, and January 1, 1986, is set forth below.

PART 611—FOREIGN FISHING

Subpart A—General

Sec.

611.1 Purpose.
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611.4 Vessel reporting.
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611.13 Incidental catch-prohibited species.
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Subpart B—Surpluses

611.20 Total allowable level of foreign fishing.
611.21 Allocations.

611.22 Fee schedule for foreign fishing.

* * * * *

Subpart A—General

§ 611.1 Purpose.

This part governs only *foreign* fishing over which the United States exercises exclusive fishery management authority under the Fishery Conservation and Management Act of 1976, as amended.

§ 611.2 Definitions.

In addition to the definitions contained in the Act, and unless the context requires otherwise, in this Part 611 the terms used shall have the following meaning (some definitions in the Act have been repeated here to aid fishermen in understanding the regulations):

(a) "Act" means the Fishery Conservation and Management Act of 1976, Pub. L. 94-265 (16 U.S.C. 1801 *et seq.*), as amended.

(b) "Agent" means the person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States with respect to an owner or operator in accordance with section 201(c)(2)(F) of the Act.

(c) "Anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to:

King salmon (*Oncorhynchus tshawytscha*)
Pink salmon (*Oncorhynchus gorbuscha*)
Chum salmon (*Oncorhynchus keta*)
Sockeye salmon (*Oncorhynchus nerka*)
Silver salmon (*Oncorhynchus kisutch*)
Steelhead trout (*Salmo gairdneri*)
Atlantic salmon (*Salmo salar*)
Striped bass (*Morone saxatilis*)

(d) "Assistant Administrator" means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (National Marine Fisheries Service) or a designee.

(e) "Authorized officer" means:

(1) Any commissioned, warrant or petty officer of the U.S. Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or Transportation to enforce the Act; and

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (e)(1) of this definition.

(f) "Billfish" means all species of marlin, spearfish, sailfish and swordfish.

(g) "Continental Shelf" means the seabed and subsoil of the submarine areas which appertain to the United States beyond the territorial sea, at any place where the depth of the superjacent waters allows exploitation of the natural resources of such areas.

(h) "Continental Shelf fishery resources" means the following:

COLENTERATA

Bamboo coral (*Acanella* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callagorgia* spp.)
Precious red coral (*Corrallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

CRUSTACEA

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon Quinquedens*)

MOLLUSKS

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)
Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Artica islandica*)

SPONGES

Glove sponge (*Hippiospongia canaliculata*)
Sheepswool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

(i) "Designated representative" means the person appointed by a nation and maintained within the United States who is responsible for receiving and submitting reports and other information concerning fishing by vessels from that nation.

(j) "Directed fishery" with respect to any species, means a fishery conducted for the purpose of catching that species.

(k) "Discard" or "discarded" means to release or return to the sea fish whether or not such fish are brought fully aboard a fishing vessel.

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(l) "Existing International Fishery Agreement" means any treaty, convention or agreement, to which the United States is a party, which relates to fishing and which was in effect on April 13, 1976, namely:

(1) The International Convention for the High Seas Fisheries of the North Pacific Ocean, with Annex and Protocol of May 9, 1952, as amended; and

(2) The Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea of March 2, 1953 (termination scheduled on March 31, 1979).

(m) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal or plant life other than marine mammals, birds and highly migratory species.

(n) "Fish over which the United States exercises exclusive fishery management authority" means:

(1) All fish within the fishery conservation zone;

(2) All anadromous species beyond the fishery conservation zone, except when they are within any foreign nation's territorial sea or fishery conservation zone (or equivalent), to the extent that such sea or zone is recognized by the United States; and

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

(o) "Fishery" means: (1) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; or

(2) Any fishing for such stocks. (For related definitions, see: Directed fishery, paragraph (j) of this section; Incidental catch, paragraph (y) of this section; and Prohibited species, paragraph (bb) of this section.)

(p) "Fishery conservation zone" (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

(q) "Fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(r) "Fishing" means any activity, other than scientific research, which:

(1) Does, is intended to, or can reasonably be expected to result in the catching or removal from the sea of fish over which the United States exercises exclusive fishery management authority;

(2) Consists of scouting or exploring for the presence of such fish by visual, acoustic, or other means which do not involve removal of fish from the sea; or

(3) Consists of any operation at sea in support of, or in preparation for, any activity described in paragraphs (1) and (2) of this definition, including, but not limited to:

(i) Processing, including freezing, fish or fish products;

(ii) Transferring or transporting fish or fish products; or

(iii) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

(s) "Fishing vessel" means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

(t) "Foreign fishing" means fishing by a vessel other than a vessel of the United States.

(u) "Foreign fishing vessel" means any fishing vessel other than a vessel of the United States.

(v) "Gear conflict" means any incident at sea involving one or more fishing vessels:

(1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and

(2) Which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

(w) "Governing International Fishery Agreement" means an agreement between the United States and a foreign nation under section 201(c) of the Act.

(x) "Highly migratory species" means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to:

Albacore (*Thunnus alalunga*)
Bigeye tuna (*Thunnus obesus*)
Bluefin tuna (*Thunnus thynnus*)
Skipjack tuna (*Euthynnus pelanis*)
Southern bluefin tuna (*Thunnus maccoyii*)
Yellowfin tuna (*Thunnus albacares*)

(y) "Incidental catch" means fish of any species, other than the directed fishery species, which are caught during a directed fishery.

(z) "Operator", with respect to any vessel, means the master or other individual on board and in charge of that vessel.

(aa) "Owner", with respect to any vessel means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; or any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreeement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

(bb) "Prohibited species", with respect to any vessel, means any species of fish which that vessel is not specifically authorized to retain.

(cc) "Round weight" means whole fish weight.

(dd) "Secretary" means the Secretary of Commerce or a designee.

(ee) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States. It does not include the remaining districts of the Trust Territory of the Pacific Islands.

(ff) *U.S. observer* or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

(gg) "Vessel day" means a unit of fishing effort measured by the presence, for any part of a day, of a vessel rigged for fishing (as defined in paragraph (r)(1) of this section) in a designated fishing area.

(hh) "Vessel of the United States" means:

(1) A vessel documented or numbered by the Coast Guard under United States law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

[43 FR 59293, Dec. 19, 1978, as amended at 50 FR 8133, Feb. 28, 1985]

§ 611.3 Permits for foreign fishing vessels.

(a) No foreign fishing vessel may engage in fishing unless a permit has been issued to it under this section.

(b) Registration permits for foreign vessels to engage in fishing pursuant to an Existing International Fishery Agreement may be issued annually by the Secretary of State upon application from the foreign nation.

(c) Annual permits for foreign fishing vessels to engage in fishing pursuant to a Governing International Fishery Agreement may be issued by the Assistant Administrator after:

(1) His approval of an application from the foreign nation;

(2) The foreign nation's acceptance of the applicable terms and conditions;

(3) The payment of the fees required under § 611.22(a) and surcharge fees required under § 611.22(b), and the provision of any assurances required by the Secretary under § 611.22(c);

(4) The designation of an agent to receive and respond to any legal process issued in the United States to an owner or operator of any vessel of that nation fishing subject to the jurisdiction of the United States.

(d) Each vessel will be authorized for one of the following activities:

Class 1: Catching, processing, and/or other support, as defined in § 611.2(r).

Class 2: Processing and/or other support, as defined in § 611.2(r)(2) and (r)(3).

Class 3: Other support, as defined in §§ 611.2(r)(2), 611.2(r)(3)(ii), and 611.2(r)(3)(iii).

Class 4: Receipt at sea of United States harvested fish from vessels of the United States ("joint venture").

(e) Applications for foreign vessel permits shall be submitted on forms available from: Office of Fisheries Affairs, Department of State (OES/OFA), Washington, D.C. 20520. To allow time for review and comments by the public, the involved governmental agencies, and appropriate fishery management councils, and the necessary processing, applications should be submitted to the Secretary of State at least 90 days prior to the date on which the foreign vessel desires to commence fishing under the proposed permit.

(f) The procedures for issuance of permits under paragraph (c) of this section and the commencement of activities thereunder are as follows:

(1) Permit Forms will be distributed to foreign nations in advance of permit issuance in order that they may be readily available for completion when permits are issued. The Permit Form provides spaces for insertion of all pertinent information contained in the permit and instructions for its use.

(2) Permits are issued by the Assistant Administrator, through the Secretary of State, in Washington, D.C., U.S.A. Permits are valid when issued, but not earlier than January 1 of the year for which the permit is issued. Permits are valid only for the specific vessel(s) for which they are issued. A permit is effective through December 31 of the year for which it is issued, unless the effective period is restricted by additional conditions and restrictions attached to the permit, as provided for in section 204 (b)(7) and (b)(12) of the Magnuson Act. Permits are not issued for small boats used for fishing which are launched from large vessels. Each such small boat is an extension of its mothership and any enforcement action or permit sanction which might result from the activities of any such small boat would be taken against the mothership. A permit specifies the permit number for each permitted vessel, any other activities authorized, any additional conditions and restrictions applicable to that permit and the date of issuance of the permit.

(3) A vessel may engage in fishing activities authorized in its permit within the effective period of the permit and only after:

(i) The permitted vessel has received notification of the permit number, the fisheries and activities authorized, any additional activities authorized, any applicable additional conditions and restrictions, and the date of issuance of the permit, and

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(ii) The vessel has substantiated receipt of such notification by prominently displaying a properly completed Permit Form in the wheelhouse of such permitted vessel.

(4) If a permit is modified by the Assistant Administrator, the fisheries, activities, conditions and restrictions, as modified, must be recorded on the Permit Form and prominently displayed in the wheelhouse.

(5) The burden of accurately transmitting the notification of the contents of the permit (or modification) to the foreign fishing vessel, and the burden of accurately recording the pertinent contents of the permit (or modification) on the Permit Form, shall be upon the foreign nation and the owner or operator of the foreign fishing vessel.

(g) The Assistant Administrator may suspend, revoke, modify, or deny a permit issued under paragraph (c) of this section. Procedures governing permit sanctions and denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(h) Permits issued under this section do not authorize vessels or persons to engage in the kill, capture, or harassment of marine mammals. The requirements, restrictions and prohibitions applicable to marine mammals and the application procedures for permits to take marine mammals incidental to fishing operations are contained in 50 CFR 216.24.

(i) Permits issued under paragraph (c) of this section may be modified by the Assistant Administrator as follows:

(1) Because compliance with this Part 611 of the regulations is a condition of all foreign fishing permits, such permits may be modified by amendment of these regulations. Any such modification which would adversely affect activities under a permit will be effective no sooner than ten days after publication of the final amended regulation in the Federal Register. Other changes in the regulations may be made effective immediately. Notice of potentially adverse modifications will be sent by the Assistant Administrator to:

(i) Each nation whose fishing vessels are affected (via the Secretary of State); and

(ii) The owner of each affected fishing vessel (via the agent).

(2) The Assistant Administrator may modify any permit for purposes of "conservation and management" (as defined in section 3(2) of the Act) of fishery resources covered by the permit. Except as provided in paragraph (i)(2)(vii) of this paragraph such modifications will be effected as follows:

(i) The Assistant Administrator shall notify the owner of the affected fishing vessel (via the agent) of the proposed modification and shall provide a summary of the reasons underlying the proposal.

(ii) The owner of the affected vessel may:

(A) Submit written comments on the proposed modification within 30 days after receipt of the notice; and

(B) Receive an informal hearing on the proposed modification if his written request for such a hearing is received by the Assistant Administrator within 15 days after receipt of the notice.

(iii) The Assistant Administrator will publish a notice of the proposed modification in the Federal Register providing for a 30-day public comment period. The Assistant Administrator will also notify the appropriate Regional Fishery Management Councils, the Secretary of State, and the Commandant of the Coast Guard asking for their written comments within 30 days of receipt of such notice.

(iv) Not less than 15 days prior to the date of a hearing, the Assistant Administrator shall:

(A) Publish a notice of the hearing in the Federal Register;

(B) Notify the requesting owner of the time and place of the hearing (via the agent).

(v) The Assistant Administrator may allow public participation at the hearing. The requesting owner and other participants may submit all relevant material, data, views, comments, arguments, and exhibits at the hearings. A summary record shall be kept of any such hearing.

(vi) The Assistant Administrator shall make a final decision regarding the proposed modification as soon as practicable after the 30-day comment period and the hearing, if any. Notice of the modification will be published in the Federal Register and will be sent to the nation involved (via the Secretary of State), the owner of the permitted fishing vessel (via the agent), each appropriate Regional Fishery Management Council, the Secretary of State, the Commandant of the Coast Guard, the Committee on Merchant Marine and Fisheries of the House of Representatives, and the Committees on Commerce, Science, and Transportation, and on Foreign Relations of the Senate.

(vii) If necessary to prevent substantial harm to a fishery resource of the United States, the Assistant Administrator may make the proposed modification effective immediately or otherwise earlier than 30 days after the date of notice of proposed modification. In such cases, the Assistant Administrator shall summarize his findings of necessity and the reasons therefore in the notices of the proposed modification required by this section. The Assistant Administrator shall expedite the hearing process whenever a modification has been implemented on an interim basis.

(3) A nation may submit a written request for a modification of any permit applicable

to a vessel of that nation. The Assistant Administrator may make technical modifications or corrections requested by the nation, such as change in radio call sign, which will be effective immediately. Similarly, a change in information submitted on an application, such as change in ownership of a vessel, processing equipment, or tonnage, will be effective immediately.

(4) If, in the opinion of the Assistant Administrator, a permit change requested by a nation would significantly affect the status of any fishery resource, such request will be treated as an application for a new permit and procedures for issuance of the permit will be in accordance with section 204 of the Act.

(5) After modification of a permit under § 611.3(i)(2) or (3) of this section, the Assistant Administrator shall promptly issue a revised permit to the nation involved.

(Approved by the Office of Management and Budget under control number 0648-0089)

[43 FR 59283, Dec. 19, 1978, as amended at 46 FR 82268, Dec. 15, 1980; 48 FR 257, Jan. 4, 1983; 48 FR 3622, Jan. 26, 1983; 48 FR 34762, Aug. 1, 1983; 49 FR 1043, Jan. 6, 1984; 49 FR 14359, Apr. 1, 1984]

§ 611.4 Vessel reporting.

(a) The operator of each foreign fishing vessel shall notify the Coast Guard, in the manner set forth in paragraph (b) of this section, of:

(1) The time and position at which the vessel will *begin* fishing (action code BEGIN) (see paragraph (d) of this section for use of action codes);

(2) The time and position of a temporary *departure* from the fishing grounds (that is, the specific location where fishing is conducted within a fishing area) for the purpose of embarking or debarking an observer or for a call at a U.S. port, or any other temporary departure from the grounds which will involve departure from any authorized fishing area but which does not include departure from the seaward limits of the fishery conservation zone (action code DEPART);

(3) The time and position of *return* to the fishing grounds following a temporary departure described in paragraph (a)(2) of this section (action code RETURN);

(4) The time and position of any *shift* in its fishing area (as shown in Appendix II to § 611.9), except when changing between areas 2 and 3 in the Northwest Atlantic Ocean fishery (action code SHIFT);

(5) The time and position it will *cease* fishing, intending to leave the fishery conservation zone (action code CEASE).

(b) The notices required by paragraph (a) of this section shall be in English. They should be delivered via private or commercial communications facilities to the appropriate Coast Guard commander who will relay them to the appropriate National Marine Fisheries Service Region (see Table I). If adequate private or commercial communications facilities have not been successfully contacted, only then may the required notice be delivered via the closest Coast Guard communications station as indicated in the accompanying Table II. Radiotelegraphy or TELEX must be used if available. Voice reports will be accepted in English only.

TABLE I

Area	National Marine Fisheries Service	U.S. Coast Guard	Telex
Pacific Ocean			
Off Hawaii and insular possessions in the Pacific	Southwest Region, Terminal Island, CA	14th District, Honolulu, HI	392401
Off California, Oregon, and Washington	Northwest Region, Seattle, WA	Pacific Area, Alameda, CA	172343
Off Alaska	Alaska Region, Juneau, AK	17th District, Juneau, AK	099-45305
Atlantic Ocean		Atlantic Area, New York, NY	126831
North of Cape Hatteras	Northest Region, Gloucester, MA		
South of Cape Hatteras, the Gulf of Mexico, and the Caribbean Sea	Southeast Region, St. Petersburg, FL		

TABLE II

Station	Call sign	Radiotelegraphy			Voice	
		kHz	MHz	Time [1]	Channel [2]	GMT time
Boston	NMF	500		All	B	All
Portsmouth	NMN	500	8, 12	do	A	0200-1200
					B, C	All
					D	1200-0200
					E	(On request)
Miami	NMA	500		do	B	All
San Juan	NMR	500	8, 12	do	None	
			16	Day		
New Orleans	NMG	500		All	A	0200-1200
					B, C	All
					D	1200-0200
					E	(On request)
Alameda	NMC	500	8	do	A, B, C	All
			6	Night	D, E	(On request)
			16	Day		
Honolulu	NMO	500	8, 12	All	A, B, C	All
			22	Day	D, E	(On request)
Guam	NRV	500		All	None	
			8, 12	Night		
Kodiak	NOJ	500		All	B	All
					A, C, D and E	(On request)

[1] Day means 2 hours after sunrise until 2 hours before sunset, local time. Night means 2 hours before sunset until 2 hours after sunrise, local time.

[2] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	12342.4
E	17307.3	16534.4

(c) The notices required by paragraphs (a)(1) and (a)(5) of this section must be *delivered* to the appropriate Coast Guard commander at least 24 hours before beginning or ceasing fishing. The other notices required by paragraph (a) of this section must be *transmitted* before the event requiring notice and *delivered* within 72 hours of the event, except as specified in § 611.70(j)(2) for the Pacific coast groundfish fishery.

(d) The notices required by this section shall contain the following information: the message identifier "VESREP" to indicate it is a required vessel report, vessel name, international radio call sign, date (month and day), time (hour and minute G.m.t.), latitude and longitude (degrees and minutes), fishing area (use code specified in Appendix II to § 611.9), and the appropriate action code (see paragraphs (a)(1) to (5) of this section). Fishing area and position to be reported shall be the area and position to which the vessel is proceeding for action codes BEGIN, RETURN, and SHIFT, and the area and position being departed for action codes DEPART and CEASE. The date and time reported shall be the date and time of arrival at or departure from the indicated position.

An illustration of a sample report is as follows: The stern trawler NAVIS, LTUX, will begin fishing on March 11, 1979, at 1320 G.m.t. at position 59-30 N. latitude, 142-30 W. longitude in the Yakutat fishing area of the Gulf of Alaska.

The required message would be transmitted as follows:

From: M/V NAVIS, LTUX
To: 17th Coast Guard District, Juneau, Alaska; Alaska Region, NMFS, Juneau, Alaska.
VESREP
NAVIS / LTUX / 0311 / 1320 / 5930N / 14230W / 64 / BEGIN

(e) The notices required by this section may be provided for individual vessels or groups of vessels (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. In these cases, the message format in paragraph (d) of this section should be modified so that each line of the text under "VESREP" is a separate vessel report.

An illustration of a group report is as follows: The refrigerated transport vessel SOPOV, LJUJ, with a fleet commander aboard, wishes to report for three stern trawlers in his fleet. The stern trawler NAVIS, LTUX, will begin fishing as described in the previous example. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58 05 N. latitude, 149 50 W. longitude in the Kodiak fishing area on March 12, 1979, at 1200 G.m.t. to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40′ N. latitude, 157°15′ W. longitude in the Chirikof fishing area on March 13, 1979, at 0800 G.m.t. to return to its home port. The required message would be transmitted as follows:

From: M/V SOPOV, LJUJ
To: 17th Coast Guard District, Juneau, Alaska; Alaska Region, NMFS, Juneau, Alaska.
VESREP
NAVIS / LTUX / 0311 / 1320 / 5930N / 14230W / 64 / BEGIN //
FISKVOL / LBEV / 0312 / 1200 / 5805N / 14950W / 63 / DEPART //
ALEXANDROV / LXDV / 0313 / 0800 / 5440N / 15715W / 62 / CEASE //

Since the illustrated group report contains notice of the beginning of fishing at 1320 G.m.t. on March 11, the message must be delivered to Commander, 17th Coast Guard District not later than 1320 G.m.t. on March 10.

(Approved by the Office of Management and Budget under control number 0648-0075)

[43 FR 59293, Dec. 19, 1978; 44 FR 17184, Mar. 21, 1979, as amended at 47 FR 43970, Oct. 5, 1982; 48 FR 22154, May 17, 1983; 48 FR 34762, Aug. 1, 1983]

§ 611.5 Vessel and gear identification.

(a) Identification. (1) Each fishing vessel assigned an international radio call sign (IRCS) shall display that call sign amidships on both the port and starboard sides of the deck house or hull, and on an appropriate weather deck.

(2) Each fishing vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, shall display the IRCS of the associated vessel followed by a numerical suffix. (For example, JCZM-1, JCZM-2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mothership whose IRCS is JCZM; JANP-1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP).

(b) The identifying markings shall be permanently affixed to the vessel in contrasting block Roman alphabet letters and arabic numerals at least one meter in height for vessels over 20 meters in length and at least one-half meter in height for all other vessels.

(c) The operator of each vessel shall:

(1) Keep the identifying markings clearly legible and in good repair, and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) Each vessel engaged in fishing shall display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972, for the activity in which the vessel is engaged.

(e) Any fishing gear which, when in use, is not physically and continuously attached to a fishing vessel shall be clearly marked with the IRCS of the vessel to which it belongs. Such marking shall be affixed to at least one element of the fishing gear so as to be visible above the water.

§ 611.6 Facilitation of enforcement.

(a) The operator of each fishing vessel shall immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the vessel for purposes of enforcing the Act and these regulations.

(b) Upon being approached by a Coast Guard cutter or aircraft or other vessel or aircraft authorized to enforce the Act, a vessel shall be alert for signals conveying enforcement instructions. The following signals based on the Interational Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you";

(3) "RY CY" meaning "You should proceed at slow speed, a boat is coming to you"; and

(4) "AA AA AA, etc." which is the call for an unknown station, to which the signaled vessel should respond by identifying itself or by illuminating (or clearing obstructions from) the vessel identification required by § 611.5.

(c) A vessel signaled for boarding shall:

(1) Guard channel 16, VHF-FM, if equipped with VHF-FM radio;

(2) Stop immediately and lay to or maneuver in such a manner as to facilitate boarding by the authorized officer and his party;

(3) Provide a safe ladder for the authorized officer and his party (Safety of Life at Sea (SOLAS) Convention of 1960 pilot ladder preferred);

(4) When necessary to facilitate the boarding provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and his party and to facilitate the boarding and inspection.

(d) A Coast Guard cutter whose personnel wish to board a fishing vessel for purposes other than law enforcement will display the international code signal "SQ3 RQ" which means "Will you stop or heave to? May I board you?"

(e) If equipped with suitable radio equipment, each fishing vessel shall guard 500 kHz and 2182 kHz each day from 2000 to 2030 G.m.t.

(f) Fishing vessels, through a fleet commander or otherwise, shall provide vessel positions when requested by the National Marine Fisheries Service or the Coast Guard within the time specified in the request.

§ 611.7 Prohibitions.

(a) It is unlawful for any person to:

(1) Violate any provision of the Act or any regulation or permit issued under the Act;

(2) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under the Act;

(3) Violate any provision of, or regulation under, an applicable Governing International Fishery Agreement entered into under section 201(c) of the Act;

(4) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act or any regulation, permit, or agreement referred to in paragraph (a)(1) or (a)(3) of this section;

(5) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(4) of this section;

(6) Resist a lawful arrest for any act prohibited by this section;

(7) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in paragraph (a)(1) or (a)(3) of this section; or

(8) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) It is unlawful for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing:

(1) Within the boundaries of any State; or

(2) Within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to § 611.3.

(c) A person is guilty of a criminal offense if he commits any act prohibited by paragraphs (a)(4), (a)(5), (a)(6), (a)(8) or (b) of this section.

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (see paragraph A of Appendix IV to § 611.9) may assign U.S. observers to foreign fishing vessels. Except as provided for in section 201(i)(2) of the Magnuson Act, no foreign fishing vessel may conduct fishing operations within the FCZ unless a U.S. observer is aboard.

(b) *Effort plan.* To insure the availability of an observer as required by this section, the owners and operators of foreign fishing vessels wishing to fish within the FCZ will submit to the appropriate Regional Director or Center Director, and also to the Chief, Enforcement Division, National Marine Fisheries Service, Washington, D.C., 20235, ATTN: F/M - 1, a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and International Radio Call Sign of each foreign fishing vessel intending to fish within the FCZ during the upcoming quarter, and each foreign fishing vessel's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the FCZ for foreign fishing vessels listed in the effort plan required by this section.

(2) If an actual date of a foreign fishing vessel will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the foreign fishing vessel may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Center Director.

(c) *Assistance to observers.* The owner and operator of a foreign fishing vessel to which an observer is assigned must do the following—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the foreign fishing vessel which are equivalent to those provided to the officers of that vessel;

(2) Cause the foreign fishing vessel to proceed to such places and at such times as may be designated by the appropriate Regional Director or Center Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the foreign fishing vessel's communications equipment and personnel as necessary for the transmission and receipt of messages;

(4) Allow the observer access to and use of the foreign fishing vessel's navigation equipment and personnel as necessary to determine the vessel's position; and

(5) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) It is unlawful for any person to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard a vessel under this section.

(e) The procedures of § 611.6(c) must be followed when boarding or disembarking observers.

(f) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Center Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(g) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Center Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 611.22(a)(2)(ii) of these regulations. Billing schedules will be specified by the terms of the contract between NOAA and the contractors beginning in FY 1986. During FY 1985, the billing schedule will be determined by the Assistant Administrator to ensure sufficient funding for the program. Billings for supplementary observer coverage will be approved by the appropriate Regional or Center Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country except as provided for by the Assistant Administrator. All bills must be paid within ten working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordances with paragraph (h)(4) of this section and § 611.22(c) of these regulations.

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NOAA for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NOAA. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following—

(A) Salary and benefits, including overtime, for supplementary observers;

(B) The costs of post-certification training required by paragraph (j)(2) of this section;

(C) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from whence the trip began. For the purposes of these regulations, the appropriate Regional or Center Director will designate posts of duty for supplementary observers;

(D) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by officials of the National Marine Fisheries Service; and

(E) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *National Marine Fisheries Service costs.* The owners and operators of foreign fishing vessels must also pay to the National Marine Fisheries Service as part of the surcharge required by section 201(i)(4) of the Magnuson Fishery Conservation and Management Act, the following costs—

(A) The costs of certifying applicants for the position of supplementary observer;

(B) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Center Director according to the requirements of the fishery to which the supplementary observer will be deployed.

(C) The costs associated with communications with supplementary observers for transmission of data and routine messages;

(D) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data;

(E) The costs for data editing and entry;

(F) Any costs incurred by the National Marine Fisheries Service to train, deploy or debrief a supplementary observer; and

(G) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NOAA.

(i) *Supplementary observer contractors*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NOAA from persons or firms having established contracts to provide NOAA with observers. In the event no such contract is in place, NOAA will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following—

(A) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services;

(B) All application information for persons which the contractor desires to employ as certified supplementary observers;

(C) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation; and

(D) All data on costs.

(j) *Supplementary observers—certification, training*—(1) *Certification.* The appropriate Regional or Center Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(A) The candidate is a citizen or national of the United States.

(B) The candidate has education or experience equivalent to the education or experience required of persons used as observers by the National Marine Fisheries Service as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of United States citizenship or nationality, the education or experience will be provided from personal qualification statements on file with NOAA contractors who provide supplementary observer services, and will not require the submission of additional information to NOAA.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(A) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Center Director as equivalent to that received by persons used as observers by the National Marine Fisheries Service as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(B) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202-735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(A) A supplementary observer fails to perform the duties specified as provided for by paragraph (g)(2) of this section.

(B) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202-735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following—

(A) Boarding inspection reports by authorized officers of the U.S. Coast Guard or the National Marine Fisheries Service, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(B) An analysis by the National Marine Fisheries Service of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer in writing of the Assistant Administrator's intent to suspend or revoke certification, and the

reasons therefore, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

(Approved by the Office of Management and Budget under control number 0648-0075).

[50 FR 8133, Feb. 28, 1985]

§ 611.9 Reports and recordkeeping.

(a) The operator of each foreign fishing vessel shall maintain an accurate log of catch and effort information in accordance with the regulations for the fishery in which the vessel is engaged.

(b) Upon each transfer of any fish or fishery product, the operators of both the transferring and receiving vessels shall record in their respective logs:

(1) The date, time, and location (in geographic coordinates) of the transfer;

(2) The weight or number, by species, of all fish transferred; and

(3) The name, nationality, and permit number of the other vessel involved in the transfer.

(c) The operator of each foreign fishing vessel shall record, in a communications log, the Greenwich mean time and content of each notification made under § 611.4.

(d) *Daily cumulative log.* (1) The operator of each foreign fishing vessel, except as otherwise provided in § 611.82(i) and § 611.90(e)(2), must maintain a daily cumulative catch log in English. This log must have recorded on a daily and a cumulative basis the round weight of all catches of all allocated species during the permit period. The operator must maintain the log aboard the vessel during the duration of the permit period. Information for each fishing area must be maintained on a separate page of the log.

(2) The log shall contain the following information:

(i) Name and call sign of the vessel.

(ii) Permit number.

(iii) Date.

(iv) Allocated species by common name and species code number (see Appendix I).

(v) Fishing area and area code number where caught (see Appendix II).

(vi) Daily catch by allocated species to the nearest tenth of a metric ton (0.1 m.t.).

(vii) Disposition of the catch: human consumption (including consumed on board), fishmeal, or discarded.

(viii) Cumulative total catch for each allocated species in each fishing area.

(3) This daily cumulative catch log must be in the format illustrated in Appendix III, which contains the instructions for completing the log. No adjustment shall be made in this log to deduct any catch off-loaded. The log must record this information for each of the species for which the vessel's flag nation has an allocation (see § 611.21).

(4) In the Pacific coast groundfish fishery, the Gulf of Alaska groundfish fishery, and Bering Sea and Aleutian Islands fishery, record in addition to allocated species the prohibited species of salmon (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish. In the Pacific coast groundfish fishery, Dungeness crab (species code 690) also is a prohibited species which must be discarded and recorded by number.

(e) *Weekly catch report.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, except as otherwise provided in § 611.90(e)(2), the catch in round weight of the species allocated to that nation, for the weekly period Sunday through Saturday, Greenwich mean time. In the Washington, Oregon, and California trawl fishery, the Gulf of Alaska groundfish fishery, and the Bering Sea and Aleutian Islands fishery, in addition to allocated species, catch of salmon and halibut in number of fish shall be reported.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) Month and day (last day of reporting period).

(iv) Fishing areas by code numbers.

(v) Number of days actually fished in each fishing area during the reporting period.

(vi) Allocated species caught during the reporting period by species code number (regardless of whether retained or discarded).

(vii) Weight of catch of allocated species by fishing area and species rounded to the nearest tenth of a metric ton (0.1 m.t.).

(3) This weekly report must be in the format illustrated in Appendix IV, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time specified in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(f) *Weekly report of receipts of U.S. harvested fish.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, any receipt of U.S. harvested fish for the weekly period Sunday through Saturday, Greenwich mean time. No report is required for vessels which receive no U.S. harvested fish during the reporting period.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) Month and day (last day of reporting period).

(iv) Fishing areas by code numbers.

(v) Species received during the week by species code number (regardless of whether retained or discarded).

(vi) Weight of fish received by fishing area and species rounded to the nearest tenth of a metric ton (0.1 m.t.).

(3) This weekly report must be in the format illustrated in Appendix V, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time as specified in the submission instructions for the Weekly Catch Report in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(g) *Weekly report of marine mammal incidental catch.* (1) Each foreign nation shall submit, through the designated representative, a weekly report stating, on a vessel-by-vessel basis, except as otherwise provided in § 611.90(e)(2), any incidental catch of marine mammals for the weekly period Sunday through Saturday, Greenwich mean time. No report is required for vessels which have no incidental catch of marine mammals during the reporting period.

(2) This report shall contain the following information:

(i) Name of vessel.

(ii) Permit number.

(iii) For each marine mammal caught:

(A) Date.

(B) Latitude and longitude.

(C) Species, by species code number.

(D) Status of mammal by status code number.

(3) This weekly report must be in the format illustrated in Appendix VI, which contains instructions for completing the report form, a sample of the form, and a sample of a Telex report.

(4) This report must arrive at the address and time as specified in the submission instructions for the Weekly Catch Report in Appendix IV D. The report may be sent by Telex but mail or hand delivery is permitted if it will arrive by the prescribed time. If the report is sent by Telex, a completed copy of the report form must be submitted by mail as a confirmation of the Telex report.

(5) For information regarding the kill, capture, or harassment of marine mammals and the requirements for permits to take marine mammals incidental to fishing operations, see § 611.3(h) and 50 CFR 216.24.

(h) In addition, the owner or operator of each fishing vessel shall provide to the Assistant Administrator, in such form and at such times as the Assistant Administrator may prescribe, such other information as the Assistant Administrator may request to carry out duties under the Act.

(i) The records and logbooks required to be kept by this section shall be:

(1) Accurately and timely maintained in a form satisfactory to the Assistant Administrator; and

(2) Made available for inspection by any authorized officer at any time.

Appendices to § 611.9

APPENDIX I—SPECIES CODES

A. ATLANTIC OCEAN FISHES (INCLUDING THE GULF OF MEXICO)

Code and common English name		Scientific name
FINFISHES		
101	Cod, Atlantic	*Gadus Morhua*
102	Haddock	*Melanogrammus aeglefinus*
103	Redfish	*Sebastes marinus*
104	Hake, silver	*Merluccius bilineans*
105	Hake, red	*Urophycis chuss*
106	Pollock	*Pollachius virens*
202	Herring, Atlantic	*Clupea harengus harengus*
204	Mackerel, Atlantic	*Scomber scombrus*
210	Salmon, coho	*Oncorhynchus kisutch*
212	Butterfish	*Peprilus triacanthus*
216	Menhaden, Atlantic	*Brevoortia tyrannus*
220	Saury, Atlantic	*Scomberesox saurus*
228	Bluefish	*Pomatomus saltatrix*
264	Swordfish	*Xiphias gladius*

A. Atlantic Ocean Fishes (including the Gulf of Mexico)—Continued

Code and common English name		Scientific name
112	Plaice, American	*Hippoglossoides platessoides*
114	Flounder, witch	*Glyptocephalus cynoglossus*
116	Flounder, yellowtail	*Limanda ferruginea*
120	Halibut, Atlantic	*Hippoglossus hippoglossus*
122	Flounder, winter	*Pseudopleuronectes americanus*
124	Flounder, summer	*Paralichthys dentatus*
132	Goosefish	*Lophius americanus*
136	Searobins (NS)	*Triglidae*
144	Cusk	*Brosme Brosme*
164	Pout, ocean	*Macrozoarces americanus*
168	Grenadier, roundnose	*Macrourus rupestris*
172	Lances, sand (NS)	*Ammodytidae*
176	Scup	*Stenotomus chrysops*
132	Tilefish	*Lopholatilus chamaeleonticeps*
186	Hake, white	*Urophycis tenuis*
188	Wolffishes (NS)	*Anarhichadidae*
894	Sculpin (NS)	*Cottidae*
302	Alewife	*Alosa pseudoharengus*
309	Herring, river (302/334/360)	
310	Shad, American	*Alosa sapidissima*
312	Argentine, Atlantic	*Argentina silus*
318	Salmon, Atlantic	*Salmo salar*
332	Bass, Black Sea	*Centropristis spp*
334	Herring, blueback	*Alosa aestivalis*
340	Capelin	*Mallotus villosus*
354	Shad, gizzard	*Dorosoma cepedianum*
360	Shad, hickory	*Alosa mediocris*
406	Scad, rough (jack mackerel)	*Trachurus lathami*
459	Dogfishes (NS)	*Squalidae*
469	Sharks (NS)	*Squaliformes*
479	Skates (NS)	*Rajiformes*
499	Other finfish	Osteichthyes—Condrichthyes
137	Red snapper	*Lutjanus campechanus*
155	Snappers (NS)	*Lutjanidae*
847	Porgies (NS)	*Sparidae*
444	Jewfish	*Epinephelus itajara*
445	Red grouper	*Epinephelus morio*
447	Warsaw grouper	*Epinephelus nigritus*
450	Black grouper	*Mycteroperca bonaci*
456	Groupers (NS)	*Serranidae*
461	Tilefish (NS)	*Branchiostegidae*
848	Reef fishes (NS)	
206	Great barracuda	*Sphyraena barracuda*
238	Dolphin	*Coryphaena hippurus*
237	Pompano dolphin	*Coryphaena equisetis*
255	Wahoo	*Acanthocybium solanderi*
372	Stingrays (NS)	*Dasyatidae*
373	Eagle rays (NS)	*Myliobatidae*
452	Porbeagle shark	*Lamna nasus*
463	Longfin Mako shark	*Isurus paucus*
464	Shortfin mako shark	*Isurus oxyrinchus*
465	Blue shark	*Prionace glauca*
256	White marlin	*Tetrapturus albidus*
254	Longbill spearfish	*Tetrapturus pfluegeri*
260	Blue marlin	*Makaira nigricans*
252	Sailfish	*Istiophorus platypterus*
240	King mackerel	*Scomberomorus cavalla*
244	Spanish mackerel	*Scomberomorus maculatus*
314	Atlantic croaker	*Micropogon undulatus*
414	Spot	*Leiostomus xanthurus*
408	Bass, striped	*Morone saxatilis*
418	Weakfish	*Cynoscion regalis*
	INVERTEBRATES	
502	Squid, long-finned	*Loligo pealei*
504	Squid, shortfinned	*Illex illecebrosus*
509	Squid (NS)	*Cephalopoda*
536	Scallop, Sea	*Placopecten Magellanicus*
619	Crabs, marine (NS)	
622	Lobster, northern	*Homarus americanus*

A. ATLANTIC OCEAN FISHES (INCLUDING THE GULF OF MEXICO)—Continued

Code and common English name		Scientific name
697	Shrimps (NS)	
630	Shrimp, royal red *robustus*	*Hymenopenaeus*

B. PACIFIC OCEAN FISHES

Code and common English name		Scientific name
	FINFISHES	
701	Pollock (walleye, Alaska)	*Theragra chalcogramma*
702	Pacific cod	*Gadus macrocephalus*
703	Sablefish (black cod)	*Anoplopoma fimbria*
704	Pacific whiting	*Merluccius productus*
118	Turbot (Greenland halibut)	*Reinhardtius hippoglossoides*
721	Turbot (arrow-tooth flounder)	*Atheresthes stomias*
720	Yellowfin sole	*Limanda aspera*
129	Other flounders (NS)	Pleuronectiformes
780	Pacific Ocean perch	*Sebastes alutus*
849	Other rockfish (NS)	Scorpaenidae
885	Lingcod	*Ophiodon elongatus*
207	Atka mackerel	*Pleurogrammus monopterygius*
208	Jack mackerel	*Trachurus symmetricus*
209	Pacific herring	*Clupea harengus pallasi*
722	Pacific halibut	*Hippoglossus stenolepis*
211	Steelhead trout	*Salmo gairdneri*
210	Pacific salmon (all species)	*Oncorhynchus spp*
499	Other finfish (NS)	Osteichthyes—Chondrichthyes
200	Armorhead	*Pentaceros Richardsoni*
201	Alfonsin	*Beryx splendens*
237	Pompano dolphin	*Coryphaena equisetis*
236	Dolphin	*Coryphaena hippurus*
252	Sailfish	*Istiophorus platypterus*
253	Black marlin	*Makaira indica*
255	Wahoo	*Acanthocybium solanderi*
260	Blue marlin	*Makaira nigricans*
261	Striped marlin	*Tetrapturus audax*
262	Shortbill spearfish	*Tetrapturus angustirostris*
263	Requiem sharks (NS)	*Carcharhinidae*
264	Broadbill swordfish	*Xiphias gladius*
265	Thresher sharks (NS)	*Alopiidae*
266	Mackerel sharks (NS)	*Lamnidae*
267	Hammerhead sharks (NS)	*Sphyrnidae*
315	Rattails (grenadiers)	*Coryphaenoides spp*
469	Other sharks (NS)	*Squaliformes*
749	Idiot Rockfish	*Sebastolobus spp*
500	Nonspecified species, see § 611.92(b)(4)	
850	Shortbelly rockfish	*Sebastes jordani*
	INVERTEBRATES	
610	Tanner crab (opilio, snow, queen)	*Chionoecetes opilio*
501	Tanner crab (bairdi, snow, queen)	*Chionoecetes bairdi*
684	Tanner crab (hybrid)	
676	Other crabs	Chionoecetes species
509	Squid (NS)	*Cephalopoda*
697	Shrimp (NS)	
696	Octopus (NS)	*Octopoda*
698	Spiny lobsters (NS)	*Palinuridae*
682	Corals (NS)	
539	Scallops (NS)	*Pectinidae*
673	Snails (NS)	*Gastropoda*
680	Dungeness crab	Cancer magister

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C. MARINE MAMMALS

Code	Common English name	Scientific name
993	Baleen whale (NS)	*Mysticeti.*
994	Toothed whales (NS)	*Odontoceti.*
915	Beluga	*Delphinapterus leucas.*
946	Northern right whale dolphin	*Lissodelphis borealis.*
992	Pilot whales (NS)	*Globicephala sp.*
998	Porpoise (NS)	*Cetacea delphinidae.*
936	Atlantic white-sided dolphin	*Lagenorhynchus acutus.*
941	Bottlenose dolphin	*Tursiops truncatus.*
940	Common dolphin	*Delphinus delphis.*
947	Harbor porpoise	*Phocoena phocoena.*
938	Pacific white-sided dolphin	*Lagenorhynchus obliquidens*
942	Risso's dolphin, grampus	*Grampus griseus.*
934	Rough-toothed dolphin	*Steno bredanensis.*
995	Seals (NS)	*Pinnipedia phocidae.*
974	Bearded seal	*Erignathus barbatus.*
976	Gray seal	*Halichoerus grypus.*
967	Harbor seal	*Phoca vitulina.*
972	Harp seal, Greenland seal	*Phoca groenlandica.*
975	Hooded seal	*Cystophora cristata.*
968	Largha seal, spotted seal	*Phoca largha.*
961	Northern elephant seal	*Mirounga angustirostris.*
958	Northern fur seal	*Callorhinus ursinus.*
973	Ribbon seal	*Phoca fasciata.*
969	Ringed seal	*Phoca hispida.*
996	Sea lions (NS)	*Pinnipedia otaridae.*
956	California sea lion	*Zalophus californianus.*
955	Northern sea lion	*Eumetopias jubatus.*
966	Walrus	*Odobenus rosmarus.*
987	Polar bear	*Ursus maritimus.*
986	Sea otter	*Enhydra lutris.*

APPENDIX II—AREA CODES

Code number	Name	Figure No.
	A. NORTHWEST ATLANTIC OCEAN FISHERY	
01	Atlantic Area 1	1
02	Atlantic Area 2	1
03	Atlantic Area 3	1
04	Atlantic Area 4	1
05	Atlantic Area 5	1
	B. PACIFIC	
51	Bering Sea Area I	2
52	Bering Sea Area II	2
53	Bering Sea Area III	2
54	Bering Sea Area IV	2
61	Shumagin	3
62	Chirikof	3
63	Kodiak	3
64	Yakutat	3
65	Southeastern	3
66	Charlotte	3
67	Vancouver	3
71	Columbia	3
72	Eureka	3
73	Monterey	3
74	Conception	3

APPENDIX II—AREA CODES—Continued

Code number	Name	Figure No.
81	Hawaii and Midway Islands	
82	Guam and Northern Mariana Islands	
83	American Samoa	
84	Johnston Atoll	
85	Howland and Baker Islands	
86	Kingman Reef and Palmyra Atoll	
87	Jarvis Island	
88	Wake Island	
	C. GULF OF MEXICO, AND ATLANTIC FISHERIES FOR BILLFISH AND SHARKS	
11	Caribbean Area 11	4
12	Gulf of Mexico Area 12	4
13	Gulf of Mexico Area 13	4
14	Gulf of Mexico Area 14	4
15	Atlantic Area 15	4
16	Atlantic Area 16	4
17	Atlantic Area 17	4

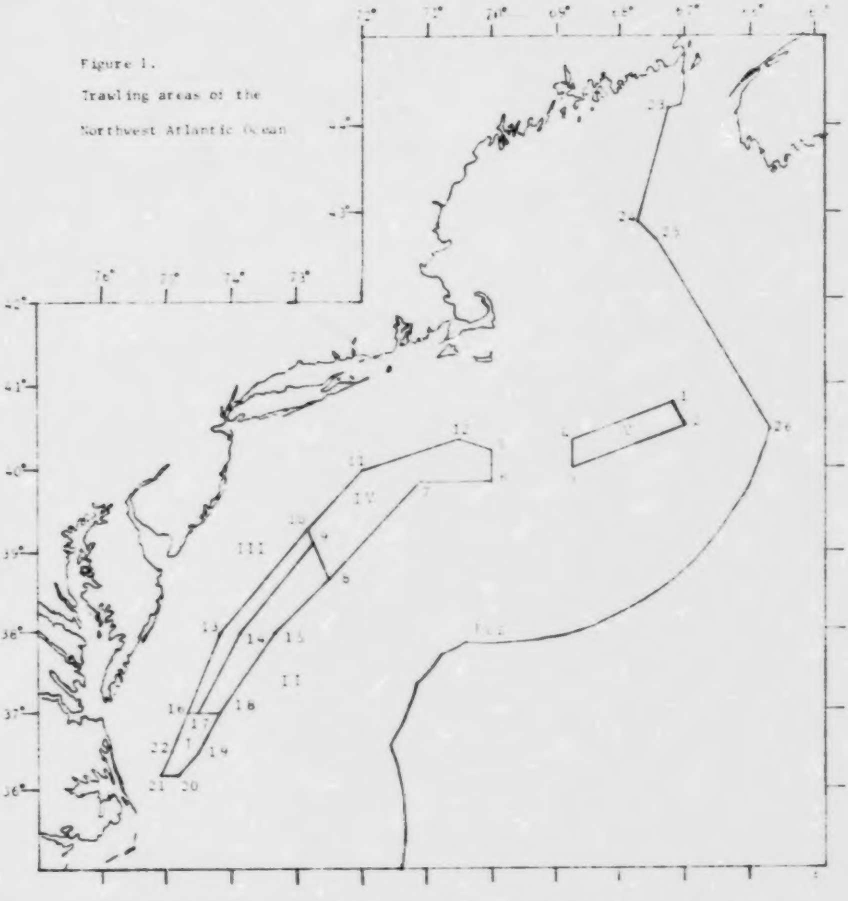


Figure 1.
Trawling areas of the
Northwest Atlantic Ocean

72°
71°
70°
69°
68°
67°
76°
75°
74°
73°
42°
41°
40°
39°
38°
37°
36°
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
I
II
III
IV
V

1.	40°47'N, 67°11'W
2.	40°30'N, 67°00'W
3.	40°01'N, 68°45'W
4.	40°20'N, 68°45'W
5.	40°13'N, 70°00'W
6.	39°50'N, 70°00'W
7.	39°50'N, 71°05'W
8.	38°40'N, 72°30'W
9.	39°07'N, 72°44'W
10.	39°16'N, 72°50'W
11.	39°56'N, 72°00'W
12.	40°20'N, 70°30'W
13.	38°00'N, 74°10'W
14.	38°00'N, 73°53'W
15.	38°00'N, 73°20'W
16.	37°00'N, 74°40'W
17.	37°00'N, 74°30'W
18.	37°00'N, 74°10'W
19.	35°30'N, 74°30'W
20.	35°13'N, 74°50'W
21.	35°13'N, 75°06'W
22.	35°30'N, 74°55'W
23.	44°11'12"N, 67°16'46"W
24.	42°53'14"N, 67°44'35"W
25.	42°31'08"N, 67°28'05"W
26.	40°27'05"N, 65°41'59"W

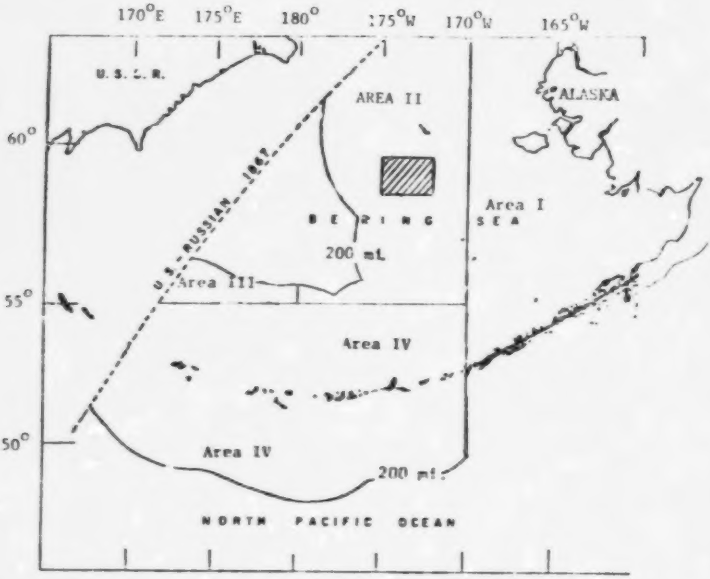

170°E
175°E
180°
175°W
170°W
165°W
U.S.S.R.
ALASKA
AREA II
60°
U.S.-RUSSIAN 1867
Area I
B E R I N G S E A
200 mi.
Area III
55°
Area IV
50°
Area IV
200 mi.
N O R T H P A C I F I C O C E A N

Figure 2. Fishing areas of the Bering Sea and Aleutian Islands. 1/

1/ For the purposes of §611.4 only, and for the period September 1 through April 30, the term "fishing area" shall, for all foreign trawl vessels subject to the requirements of §611.93, also mean the area described in §611.93(a)(1). This area is represented by the cross-hatched portion of Fishing Area II, above.

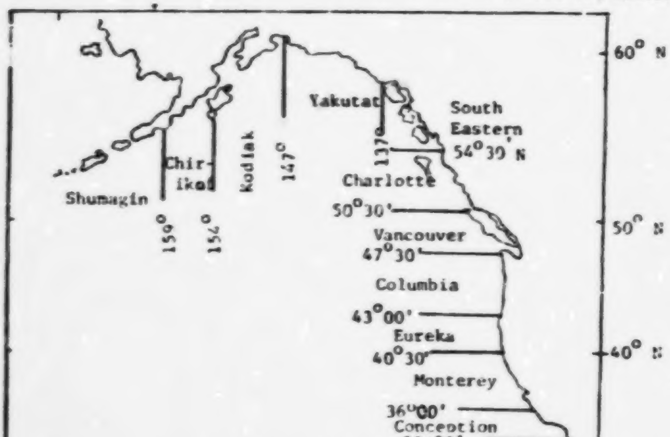
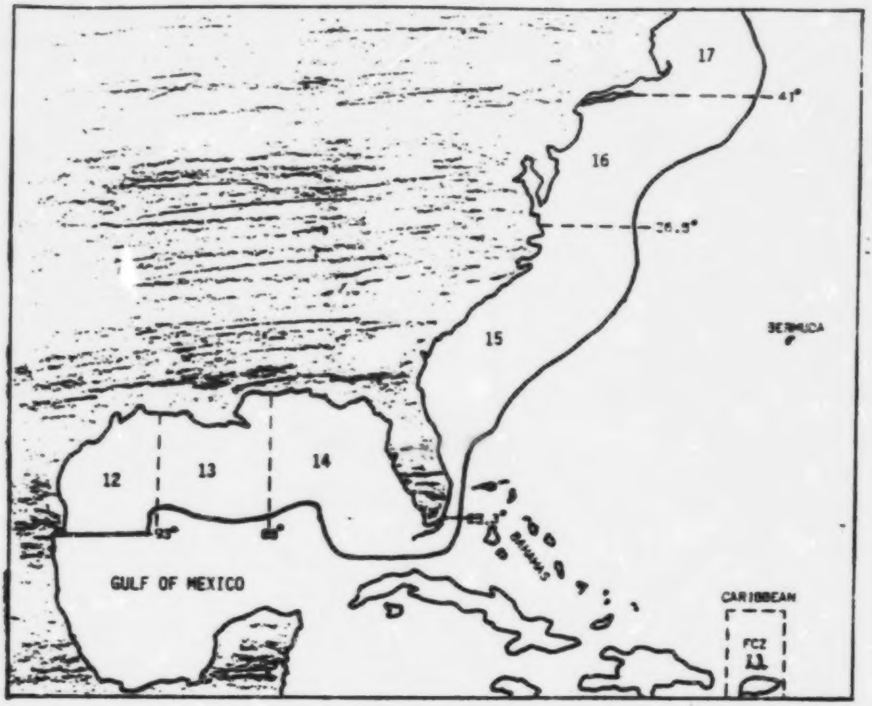

60° N
Yakutat
South Eastern
54°30' N
137°
147°
Chirikof
Kodiak
Shumagin
Charlotte
50°30'
159°
154°
50° N
Vancouver
47°30'
Columbia
43°00'
Eureka
40°30'
40° N
Monterey
36°00'
Conception
32°30'
30° N
170° W
160° W
150° W
140° W
130° W

Figure 3. Fishing areas of the Gulf of Alaska and northeast Pacific

43d


17
41°
16
36.5°
15
BERMUDA
12
13
14
93°
88°
BAHAMAS
GULF OF MEXICO
CARIBBEAN
FCZ
11

APPENDIX III—DAILY CUMULATIVE CATCH LOG

A. *Form Entries.* 1. Vessel name and call sign: Enter name and international radio call sign (IRCS) as shown on the permit.

2. Permit no.: Enter assigned permit number for the current year.

3. Fishing area and code number: Enter area and code number, from Appendix II, in which the fish were caught. The catch from each area shall be maintained on a separate form.

4. Date: Enter the day based on Greenwich mean time, on which the catch was taken.

5. Species: Enter the common name and species code for each species caught for which there is an applicable national allocation. Use appropriate species codes from Appendix I.

6. Catch: Enter each day's catch by species, to the nearest tenth of a metric ton (0.1 m.t.), round weight, by fishing area.

7. Disposition: For each species, specify the disposition as follows: Enter "C" for fish consumed on board and for fish which are frozen or otherwise processed other than for fishmeal; enter "M" for fish which are processed for fishmeal; and enter "D" for fish which are discarded. For individual fish which are in part used for fishmeal with the remainder otherwise processed, enter "C".

8. Cumulative: Enter the cumulative catch, by species, to the nearest tenth of a metric ton (0.1 m.t.), round weight, by fishing area.

B. *Log maintenance.* The cumulative catch log is to be updated within 12 hours following the end of the day on which the catch was taken. Entries as to weights shall be based on the most accurate method available to the vessel including, but not limited to, scale round weights, factory weights converted to round weights, or estimated deck weights.

C. *Sample log entries.* 1. The stern trawler NAVIS, LTUX, permit number LT-79-0001-A, commenced fishing under its 1979 permit on March 13, 1979. On that date in the Yakutat area (code 64) of the Gulf of Alaska the vessel's catch of allocated species was 80.32 tons of pollock (code 701), 12.24 tons of Pacific ocean perch (code 780), and 6.20 tons of Atka mackerel (code 207). The pollock and Pacific ocean perch were frozen and the Atka mackerel were processed for fishmeal. On March 14, the vessel's catch of allocated species was 41.32 tons of pollock, 5.57 tons of Pacific ocean perch, and 1.80 tons of Atka mackerel in the Yakutat area before shifting to the Kodiak area where 23.44 tons of pollock, 23.68 tons of Pacific ocean perch, 86.36 tons of Atka mackerel, and .36 tons of sablefish were caught. The pollock and Pacific ocean perch were frozen and the Atka mackerel were discarded.

2. A separate log sheet would be required to record the catch in each fishing area. The log form for the Yakutat area would appear as follows:

DAILY CUMULATIVE CATCH LOG

Vessel name and call sign: NAVIS, LTUX.
Permit No. LT-79-0001-A.
Fishing area and code number: YAKUTAT, 64.

SPECIES: POLLOCK—701

Date: March 13, 1979—
Catch: 80.3 tons.
Disposition: C.
Cumulative: 80.3 tons.

Date: March 14, 1979—
Catch: 41.3 tons.
Disposition: C.
Cumulative: 121.6 tons.

SPECIES: PACIFIC OCEAN PERCH—780

Date: March 13, 1979—
Catch: 12.2 tons.
Disposition: C.
Cumulative: 12.2 tons.

Date: March 14, 1979—
Catch: 5.6 tons.
Disposition: C.
Cumulative: 17.8 tons.

SPECIES: ATKA MACKEREL—207

Date: March 13, 1979—
Catch: 6.2 tons.
Disposition: M.
Cumulative: 6.2 tons.

Date: March 14, 1979—
Catch: 1.8 tons.
Disposition: D.
Cumulative: 8.0 tons.

APPENDIX IV—WEEKLY CATCH REPORT

A. *Report form entries.*

1. Page numbering: Sequentially number each page and the total number of pages in each submission. For example, the pages of a submission encompassing the catches of three vessels would be numbered "Page 1 of 3", "Page 2 of 3", and "Page 3 of 3".

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters, in the space provided.

3. Permit number: Enter the current permit number without hyphens.

4. Month/Day: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours, G.m.t. (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, G.m.t. (except during the last week of each year when it ends on December 31).

For example, for the report period ending on Saturday, April 7, 1979, enter: 0407.

5. Area code: Enter the code from Appendix II for each area in which the vessel fished during the reporting period.

6. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area during the reporting period.

7. Species: Enter the code from Appendix I for each allocated species caught during the reporting period. In addition, in the Washington, Oregon, and California trawl fishery, the Gulf or Alaska goundfish fishery, and the Bering Sea and Aleutian Islands fishery enter the species code 210 for salmon and the species code 722 for halibut.

8. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 m.t.), by species and area, of allocated species caught during the reporting period, regardless of whether retained or discarded. In addition, in the Washington, Oregon, and California trawl fishery, the Gulf of Alaska groundfish fishery, and the Bering Sea and Aleutian Islands fishery, for salmon and halibut enter number of fish discarded.

9. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

10. Date: Enter the date the report is submitted to the National Marine Fisheries Service by the designated representative.

B. *Telex reports.*

1. To ensure receipt of the Weekly Catch Report in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data shall be submitted as follows:

Vessel name/Permit number/Date//
Area/Days fished//
Species/Catch//Species/Catch//etc.//
Area/Days fished//
Species/Catch//Species/Catch//ect.//etc.

C. *Example of a Weekly Catch Report.*

1. The stern trawler NAVIS, permit number LT-79-0001-A, entered the fishery conservation zone on Sunday, March 11, 1979, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 13, and continued fishing in that area the morning of March 14. The afternoon of March 14, the vessel shifted to the Kodiak area (code 63), commenced fishing that evening, and continued fishing through Saturday, March, 17, 1979. (Note that March 14 counts as a day fished in *both* area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and .4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP
NAVIS/LT790001A/0317//
64/2//
701/121.6//780/17.8//207/8.0//
63/4//
701/23.4//780/23.7//207/86.4//703/.4//

3. The completed form would appear as follows:

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49a

WEEKLY CATCH REPORT

VESSEL NAME

WAVIS

PAGE 1 OF 1

PERMIT NUMBER

LT79000 1A

MONTH DAY

03 17

AREA CODE	DAYS FISHED	SPECIES CODES									
		701	780	207	703						
64	2	121.6	17.8	8.0							
63	4	23.4	23.7	86.4	.4						

DESIGNATED REPRESENTATIVE: Smith Shipping Co. DATE: 3/20/79

560

D. *Submission instructions.*

1. Weekly reports must be received from designated representatives in the prescribed format by the appropriate Regional/Center Director of the National Marine Fisheries Service by the times indicated below:

Fishery	Address	Report Received by
Northwest Atlantic Ocean	Director, Northeast Region, National Marine Fisheries Service 14 Elm Street Gloucester, Massachusetts 01930 Telex No: 940007.	Wednesday, 1900 G.m.t., following reporting period.
Washington, Oregon California Trawl	Director, Northwest Region National Marine Fisheries Service 1700 Westlake Avenue, North Seattle, Washington 98109 Telex No.: 9104442786.	Wednesday, 1900 G.m.t. following reporting period.
Seamount Groundfish	Director, Southwest Region National Marine Fisheries Service 300 South Ferry Street Terminal Island, California 90731.	Wednesday, 1900 G.m.t., following reporting period.
Atlantic Billfish and Sharks	Director, Southeast Fisheries Center National Marine Fisheries Service 75 Virginia Beach Drive Miami, Florida 33149.	Wednesday, 1900 G.m.t., following reporting period.
Bering Sea and Aleutian Islands Gulf of Alaska Groundfish Snails (Bering Sea) Crab (Bering Sea).	Director, Alaska Region National Marine Fisheries Service P.O. Box 1668 Juneau, Alaska 99801 Telex No.: 09945-377.	Second Monday, 1900 G.m.t., following reporting period.
Royal Red Shrimp	Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Dr., Miami, Florida, 33149.	Wednesday, 1900 G.m.t. following reporting period.

Table I. Fishing gear and season restrictions by fishing area.
Northwest Atlantic Ocean Fishery

Off-Bottom Gear Only

Area [1]	January	February	March	April	May	June	July	August	September	October	November	December
1										▨	▨	▨
2	▨	▨	▨			▨	▨	▨	▨ [2]	▨	▨	▨
3	▨	▨	▨							▨	▨	▨
4								▨	▨	▨	▨	▨
5								▨	▨	▨	▨	▨

Bottom Gear and Off Bottom Gear

Area [1]	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
4	▨	▨	▨									
5	▨	▨	▨									

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month.

[1] Coordinates of the various areas are set forth in Figure 1 of this section.

[2] Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15.

▨ Denotes maximum open fishing season, subject to possible earlier closure for some of all nations in accordance with § 661.13.

2. By agreement with the appropriate Regional/Center Director, weekly reports may be submitted to some other appropriate representative of the National Marine Fisheries Service.

APPENDIX V—WEEKLY REPORT OF RECEIPT OF U.S. HARVESTED FISH

A. *Report form entries.*

1. Page numbering, vessel name, permit number, month/day, area code, designated representative, and date shall be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix IV A 1-5, 9 and 10.

2. Species: Enter the code from Appendix I for each species received during the reporting period, including those which are subsequently discarded.

3. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 m.t.), by species and area, of species received from vessels of the U.S. during the reporting period, regardless of whether retained or discarded.

B. *Telex reports.*

1. To ensure receipt of the Weekly Report of Receipts of U.S. Harvested Fish in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be submitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Report of Receipt of U.S. Harvested Fish. Data shall be submitted as follows:

Vessel name/Permit number/Date//
Area//
Species/Amount received//Species/Amount received//etc.//
Area//
Species/Amount received//Species/Amount received//etc.//etc.

C. *Example of a Weekly Report of Receipt of U.S. Harvested Fish.*

1. The stern trawler NAVIS, operating under permit number LT-79-0001-A which authorizes the receipt of U.S. harvested Pacific hake and other associated species in the Washington, Oregon, California trawl fishery, received from U.S. vessels in the Columbia area (Code 71) during the week of June 3-9, 1979, the following species and amounts: Pacific hake (code 704), 156.3 tons; rockfishes (code 849), .2 tons; jack mackerel (code 208), 27.0 tons; and other species (code 499), .1 tons.

2. The text of the Telex report would appear as follows:

RECREP
NAVIS/LT790001A/0609//
71//
704/156.3//849/.2//208/27.0//499/.1//

3. The completed form would appear as follows:

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WEEKLY REPORT OF RECEIPT OF U.S. HARVESTED FISH

VESSEL NAME
NAVIS

PAGE 1 OF 1

PERMIT NUMBER
LT790001A

MONTH DAY
0609

SPECIES RECEIVED (METRIC TONS) BY AREA

AREA CODE	SPECIES CODES										
	704	849	208	499							
71	156.3	.2	27.0	.1							

DESIGNATED REPRESENTATIVE: Smith Shipping Co

DATE: 6/12/79

564

D. *Submission instructions.* The submission instructions for the Weekly Catch Report, as contained in Appendix IV D, are applicable to this report. No report is required, however, for vessels which receive no U.S. harvested fish during the reporting period.

APPENDIX VI—WEEKLY REPORT OF MARINE MAMMAL INCIDENTAL CATCH

A. *Report form entries.*

1. Page numbering, vessel name, permit number, designated representative, and date shall be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix IV A 1-3, 9, and 10.

2. For each mammal caught enter:

a. Date caught. Enter the month and day, e.g., for May 6, 1980, enter: 0506.

b. Latitude and longitude to the nearest degree.

c. Species code from Appendix I.

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead prior to capture; and 4—Uninjured.

B. *Telex reports.*

1. To ensure receipt of the Weekly Report of Marine Mammal Incidental Catch in a timely manner, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be sumitted by mail as a confirmation. Designated representatives may include a number of vessel reports in one Telex message providing the information is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex shall contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Report of Marine Mammal Incidental Catch. Data shall be sumitted as follows:

Vessel name/Permit number//
Date/Latitude/Longitude/Species/Status//
Date/Latitude/Longitude/Species/Status/etc.

C. *Example of a Weekly Report of Marine Mammal Incidental Catch.*

1. The stern trawler NAVIS, permit number LT-79-0001-A, commenced fishing in the Bering Sea Area II on April 27, 1979. No marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10′ N, 171°25′ W. One was killed during retrieval of the trawl and the other was uninjured. On May 17 at 56°35′ N, 171°40′ W, a northern sea lion (code 955) was injured during capture.

2. The text of the Telex report would appear as follows:

MAMREP
NAVIS/LT790001A//
0515/56N/171W/967/1//
0515/56N/171W/967/4//
0517/57N/172W/955/2//

3. The completed form would appear as follows:

566

WEEKLY REPORT OF MARINE MAMMAL INCIDENTIAL CATCH

PAGE 1 OF 1

VESSEL NAME

N.A.V.I.S.

PERMIT NUMBER

L.T.7.9.0.0.0.1.A

RECORD CATCH OF INDIVIDUAL ANIMALS - ONE ANIMAL PER LINE

DATE (MM/DD)	LATITUDE (Degrees)	LONGITUDE (Degrees)	SPECIES CODE	STATUS CODE
0515	56N	171W	967	1
0515	56N	171W	967	4
0517	57N	172W	955	2

STATUS CODES

1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD PRIOR TO CAPTURE
4. UNINJURED

DESIGNATED REPRESENTATIVE Smith Shipping Co. DATE 5/21/79

566

D. *Submission instructions.* The submission instructions for the Weekly Catch Report, as contained in Appendix IV D, are applicable to this report. No report is required, however, for vessels which have no incidental catch of marine mammals during the reporting period.

(Approved by the Office of Management and Budget under control number 0648-0075)

[43 FR 59293, Dec. 19, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 611.9, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 611.10 Fishery support operations.

(a) Fishery support operations are those activities described in § 611.2(r)(3).

(b) Fishery support operations by foreign fishing vessels within the fishery conservation zone are allowed only in those areas and during those times in which the vessel being supported is authorized to conduct directed fisheries, and under such other circumstances as may be designated in these regulations or the permit.

(c) No foreign fishing vessel may conduct fishery support operations in support of a vessel of the United States except as specifically authorized in the supporting vessel's permit.

§ 611.11 Gear conflicts.

(a) Each fishing vessel shall conduct its operations with due regard for the activities of other fishing vessels. Fishing vessels using mobile fishing gear shall take special care to minimize the possibility of conflict with, and damage to, fixed fishing gear.

(b) Each foreign fishing vessel shall maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing.

(c) Each foreign fishing vessel which is involved in a gear conflict, or which retrieves the gear of another fishing vessel in its gear, shall immediately notify the appropriate Coast Guard commander as indicated in § 611.4.

(d) Claims against another vessel concerning the loss of or damage to the fishing vessel, fishing gear or catch of a U.S. citizen which may have been caused by a foreign fishing vessel fishing pursuant to the Act may be resolved as follows:

(1) Claims involving loss or damage of property amounting to $25,000 or less must be submitted to binding arbitration whenever demanded by the U.S. claimant or the owner or operator of the foreign fishing vessel which may have caused the loss or damage. If arbitration is demanded, both the U.S. claimant and the owner or operator of the foreign vessel, or their agents must appear at the arbitration proceedings and be bound by the decision of the arbitrator.

(2) Claims involving loss or damage of property amounting to over $25,000 must be submitted to binding arbitration whenever demanded by the U.S. claimant. If arbitration is demanded by the U.S. claimant, both the U.S. claimant and the owner or operator of the foreign vessel, or their agents, must appear at the arbitration proceedings and the parties will be bound by the decision of the arbitrator.

(3) A demand for arbitration must be made in writing to the other party. Any arbitration proceeding under this paragraph shall be conducted according to the Commercial Arbitration rules of the American Arbitration Association, and shall be conducted in the United States. The list from which arbitrators are selected will, whenever possible, include individuals with knowledge in fishery matters or admiralty law.

§ 611.12 Directed fisheries.

(a) No foreign fishing vessel may conduct a directed fishery unless such directed fishery is authorized by and conducted in accordance with, this Part 611.

(b) It shall be a rebuttable presumption that any haul that contains more than 50 percent by weight or number of fish (as appropriate for the gear in use) of any species or species group (such as "other species") was conducted for the purpose of catching that species or species group and therefore constitutes a directed fishery for that species or species group.

§ 611.13 Incidental catch—prohibited species.

(a) Each foreign fishing vessel shall minimize its catch of prohibited species.

(b) Each foreign fishing vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(c) It shall be a rebuttable presumption that any prohibited species or part thereof found on board a foreign fishing vessel was caught and retained in violation of this Part 611.

§ 611.14 Incidental catch—other species.

(a) A fishing vessel may retain its incidental catch of any species for which there is an applicable, unfulfilled national allocation. Regardless of whether or not the catch of such authorized incidental species is retained or discarded it will be counted against the applicable national allocation.

(b) Species of fish which a foreign fishing vessel is not specifically authorized to retain under this part shall be treated as prohibited species in accordance with § 611.13.

§ 611.15 Fishery closure procedures.

(a) A foreign fishing vessel's authorization to engage in fishing shall be cancelled when the Assistant Administrator finds that:

(1) The optimum yield for the directed fishery species has been reached;

(2) The optimum yield for any species or species group (such as "other species") caught as an incidental catch in the directed fishery has been reached;

(3) The total allowable level of foreign fishing for the directed fishery species has been reached;

(4) The total allowable level of foreign fishing for any species or species group (such as "other species") caught as an incidental catch in the directed fishery has been reached;

(5) Any applicable vessel-day limitation for the fishery or area has been reached;

(6) The applicable national allocation for the directed fishery species involved has been reached;

(7) The applicable national allocation for any species or species group (such as "other species") caught as an incidental catch during the directed fishery has been reached; or

(8) The owner or operator of the foreign fishing vessel has not established and maintained the letter of credit required in § 611.22(a)(2)(ii).

(b) Vessel check-in/check-out information, United States surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determinations listed in § 611.15(a). If the National Marine Fisheries Service (NMFS) estimates of catch or other values made during the season differ from those reported by the foreign fleets, immediate efforts will be initiated by the NMFS through the appropriate foreign authorities to resolve such differences. If, however, differences still persist after such efforts have been made, NMFS estimates shall be the basis for decisions and shall prevail.

(c) When closing a fishery, the Assistant Administrator will notify:

(1) The foreign nation(s) involved; and

(2) The designated representative for any affected fishing vessel. If possible, at least 48 hours prior notice of the closing will be given. Failure of the Assistant Administrator to so notify will not relieve the foreign nation of its responsibilities to terminate fishing by its vessels when applicable allocations are reached.

(d) Any cancellation under this section of a foreign fishing vessel's authorization to engage in a fishery shall remain in effect until an applicable new or increased allocation becomes available unless earlier specified by the Assistant Administrator or by the regulations in this Part 611.

[43 FR 59293, Dec. 19, 1978, as amended at 45 FR 86498, Dec. 31, 1980]

§ 611.16 Disposal of fishing gear and other articles.

(a) Except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the Coast Guard, by an authorized officer, or, in the Northwest Atlantic Ocean fishery, by an embarked observer, no fishing vessel may intentionally place into the fishery conservation zone any article, including abandoned fishing gear, which may:

(1) Interfere with fishing or obstruct fishing gear or vessels; or

(2) Cause damage to any fishery resource or marine mammal.

(b) If any such article is encountered, or in the event of accidental or emergency placing of such article into the fishery conservation zone, the operator of the vessel shall immediately report the incident to the appropriate Coast Guard Commander (as provided in § 611.4) giving:

(1) The name of the reporting person and his vessel;

(2) The nature of the article;

(3) The location of the article; and

(4) The time and date of the incident.

(c) All fishing gear which is set or otherwise deployed in a manner in which it may entrap or otherwise catch fish shall be tended as frequently as necessary to ensure that its catch remains suitable for the use intended.

§ 611.17 Scientific research.

(a) The term "scientific research" contained in paragraph (r) of § 611.2 may include certain fishing activities such as the catching, taking, or harvesting of fish in commercial quantities, or the use of gear capable of catching, taking, or harvesting fish in commercial quantities, or fishing in areas, at times, for species, and with gear, any of which may not be otherwise authorized, if such activities are carried out in full cooperation with the United States.

(b) For the purpose of gathering additional management information, the Center Director may authorize limited "scientific research" as described in paragraph (a) of this section under terms and conditions to be specified by the Center Director.

§ 611.18 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators shall exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws which implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

[48 FR 31860, July 12, 1983]

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing.

(a) The total allowable level of foreign fishing (TALFF), if any, with respect to any fishery subject to the exclusive fishery management authority of the United States is that portion of the optimum yield (OY) of such fishery which will not be harvested by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFFs will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFFs at the beginning of the relevant fishing year will be published in the FEDERAL REGISTER. Adjustments to those numbers will be published as notices in the FEDERAL REGISTER upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Fisheries Management, F/MI, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

[47 FR 44265, Oct. 7, 1982, as amended at 48 FR 57495, Dec. 30, 1983]

§ 611.21 Allocations.

(a) The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of the TALFF. The Secretary of State officially notifies each foreign nation of its allocation by fishery and species. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels shall be upon the foreign nation and the owner or operator of the foreign fishing vessel.

(16 U.S.C. 1801 *et seq.*, and 22 U.S.C. 1971 *et seq.*)

[43 FR 59293, Dec. 19, 1978, as amended at 44 FR 76297, Dec. 26, 1979; 50 FR 8135, Feb. 28, 1985]

§ 611.22 Fee schedule for foreign fishing.

(a) The fee charges for fishing by foreign flag vessels for fish over which the United States exercises exclusive fishery management authority required by section 204(b)(10) of the Act and § 611.3(c)(3) of this part are specified as follows:

(1) *Permit application fees.* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $101 per vessel, plus the surcharge if required under paragraph (b) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the permit fees, made out to Department of Commerce, NOAA must be sent to: Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Room 414 Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(ii) Permit fees may be refunded if the application is not approved. On a case-by-case basis, the Assistant Administrator may refund permit fees if the country's allocation is significantly and unexpectedly reduced.

(iii) On a case-by-case basis, the Assistant Administrator may allow the substitution of a similar vessel when the originally permitted vessel is disabled or otherwise cannot participate in the fishery.

(2) *Poundage fees.* (i) If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table I, plus the surcharge required by paragraph (b) of this section.

TABLE 1 TO § 611.22 SPECIES AND POUNDAGE FEE

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
Atlantic and Gulf Fisheries	
1. Butterfish	160
2. Hake, red	96
3. Hake, silver	102
4. Herring, river	46
5. Mackerel, Atlantic	49
6. Other finfish, Atlantic	69
7. Squid, *Illex*	57
8. Squid, *Loligo*	114
9. Atlantic Shark	110
10. Shrimp, royal red	(1)

TABLE 1 TO § 611.22 SPECIES AND POUNDAGE FEE—Continued

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
Alaska Fisheries	
11. Pollock, Alaska	32
12. Cod, Pacific	73
13. Pacific ocean perch	100
14. Other rockfish (Alaska)	94
15. Mackerel, Atka	52
16. Squid, Pacific	59
17. Flatfish, Gulf of Alaska and Bering Sea and Aleutian Islands	34
18. Sablefish, Gulf of Alaska	159
Bering Sea and Aleutian Islands	64
19. Other species	39
20. Snails	66
Pacific Fisheries	
21. Whiting, Pacific	32
22. Sablefish	143
23. Pacific ocean perch	124
24. Other rockfish	119
25 Flounders	155
26. Mackerel, jack	55
27. Other species	154
Western Pacific Fisheries	
28. Coral	[2] 53
29. Wahoo	103
30. Dolphin fish	1,428
31. Wahoo	571
32. Sharks, Pacific	286
33. Striped marlin	428
34. Pacific billfish	514
35. Pacific swordfish	514

[1] Reserved.
[2] Dollars per kilogram.

(ii) *Method of payment of poundage fees, observer fees, and surcharges.* If a nation chooses to accept an allocation, an irrevocable revolving letter of credit must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (a)(2)(i) of this section, or as determined by the Assistant Administrator, plus the surcharges required by paragraph (b) of this section, and § 611.8(b). The Department of Commerce, NOAA, must be designated as the beneficiary. The customer must pay all commissions, telex, and service charges. The letter of credit must be confirmed by a bank in the United States. No fishing will be allowed unless the letter of credit is established, and authorized written notice of its issuance and confirmation is provided to the Assistant Administrator at the address in paragraph (a)(1)(i) of this section.

(iii) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January-March, April-June, July-September, and October-December. The appropriate Regional Director will reconcile catch figures with each country, following the procedures of § 611.15(b). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(b) The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) of this section may also be required to pay a surcharge. The Assistant Administrator has waived the surcharge because he has determined that the Fishing Vessel Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator may reinstate or increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund.

(c) *Observer fees.* The Assistant Administrator will notify the owners or operators of foreign fishing vessels of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for prepayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a revolving letter of credit as prescribed in § 611.22(a)(2)(ii). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover the cost of anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile costs within 90 days after the end of the fiscal year.

(d) A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Secretary to provide financial assurances. Such assurances may be required if—

(1) Civil and criminal penalties assessed against fishing vessels of the nation have not effectively deterred violations;

(2) Vessels of that nation have engaged in fishing in the FCZ without proper authorization to conduct such activities;

(3) The nation's vessel owners have refused to answer administrative charges of summons to appear in court; or

(4) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. government.

(16 U.S.C. 1801 *et seq.*; 22 U.S.C. 1980)

[43 FR 59293, Dec. 19, 1978, as amended at 45 FR 86498, Dec. 31, 1980; 47 FR 628, Jan. 6, 1982; 48 FR 258, Jan. 4, 1983; 48 FR 27080, June 13, 1983; 48 FR 57495, Dec. 30, 1983; 49 FR 14359, Apr. 11, 1984; 50 FR 467, Jan. 4, 1985; 50 FR 8135, Feb. 28, 1985; 50 FR 8336, Mar. 1, 1985]

PART 619—PREEMPTION OF STATE AUTHORITY UNDER SECTION 306(b)

Sec.
619.1 Purpose and scope.
619.2 General policy.
619.3 Definitions.
619.4 Factual predicates for Federal preemption.
619.5 Commencement of proceedings.
619.6 Rules pertaining to the hearing.
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619.9 Application for reinstatement of State authority.

AUTHORITY: 16 U.S.C. 1856(b).

SOURCE: 47 FR 12182, Mar. 22, 1982, unless otherwise noted.

§ 619.1 Purpose and scope.

The rules in this part, together with the requirements of 5 U.S.C. 554 through 557, prescribe procedures for the conduct of preemption hearings under section 306(b) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1856(b). These rules are issued by the Secretary of Commerce pursuant to the authority of section 305(g) of the Act and the requirement of 5 U.S.C. 552(a)(1)(C).

§ 619.2 General policy.

It is the policy of the Secretary of Commerce that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 619.3 Definitions.

As used in this part, unless the context clearly requires otherwise:

Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Administrator means the Administrator, National Oceanic and Atmospheric Administration (NOAA), or any person to whom the Administrator's authority has been delegated.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or any person to whom the Assistant Administrator's authority has been delegated.

Council means any appropriate Regional Fishery Management Council established under Title III of the Act.

Party to the proceeding means the Assistant Administrator and each State served with a notice of proposed preemption (as represented by such State's Attorney General or other official representative).

Secretary means the Secretary of Commerce.

State means any State or States, as defined in section 3(21) of the Act, with respect to which action is taken under this part.

§ 619.4 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of State management authority over a fishery are:

(1) The fishing in a fishery, which is covered by a fishery management plan implemented under the Act, is engaged in predominately within the fishery conservation zone (FCZ) and beyond such zone; and

(2) A State has taken an action, or omitted to take an action, the results of which will substantially and adversely affect the carrying out of such fishery management plans.

(b) *Definitions.* In addition to definitions contained in section 3 of the Act, terms used in this section have the following meanings:

Predominately means, with respect to fishing in a fishery, that more fishing on the stock or stocks of fish covered by the fishery managment plan occurs, or would occur in the absence of regulation, within or beyond the FCZ than within the boundaries of all States off the coasts of which the fishery is conducted. Whether fishing is engaged in "predominately" within or beyond the FCZ shall be determined after consideration of relevant factors, including but not limited to:

(1) The catch (based on numbers, value or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period,

(2) In light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

State action or omission that affects a fishery covered by a fishery management plan includes a State's statutes, conservation and management regulations, judicial decisions, policies, and enforcement practices, or the lack thereof.

Substantially (affects). Whether or not a State's action or omission will substantially affect the carrying out of a fishery management plan (FMP) for a fishery is determined after consideration of relevant factors, including but not limited to:

(1) The similarity or dissimilarity between:

(i) The goals, objectives, or policies of the State's action or omission and the management goals or objectives specified in the FMP for the fishery, or

(ii) The State and Federal conservation and management measures for the fishery;

(2) The effect of the State's action or omission upon:

(i) The achievement of the FMP's goals or objectives for the fishery;

(ii) The achievement of optimum yield from the fishery on a continuing basis;

(iii) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Act) and compliance with other applicable law; and

(iv) The enforcement of regulations implementing the FMP;

(3) The proportion of the total fishery (stock or stocks of fish and fishing for such stocks) that occurs or has occurred within the boundaries of such State, or that is subject to the effects of a particular State's action or omission; and

(4) The characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery.

§ 619.5 Commencement of proceedings.

(a) *Notice of proposed preemption.* The Assistant Administrator may, if deemed necessary, initiate a proceeding under this part by issuing a notice of proposed preemption to the Governor and Attorney General of the State concerned. The notice shall contain:

(1) A recital of the legal authority and jurisdiction for instituting the proceeding;

(2) A concise statement of the § 619.4 factual findings for Federal preemption upon which the notice is based;

(3) The time, place, and date of the hearing; and

(4) Any regulations which the Assistant Administrator proposes to apply or promulgate with respect to fishing within the boundaries of the State.

(b) *Response.* The State shall have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Assistant Administrator may, at any time prior to the hearing, amend or withdraw the notice of proposed preemption. At the discretion of the administrative law judge, the Assistant Administrator may, after the hearing has begun but before the record is closed, amend or withdraw the notice of proposed preemption.

(d) *Proposed regulations*—(1) *In general.* If additional regulations are required to govern fishing within the boundaries of a State, the Assistant Administrator shall publish proposed regulations in the FEDERAL REGISTER concurrently with issuing the notice indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section shall prevent the Secretary from taking emergency action under section 305(e) of the Act.

§ 619.6 Rules pertaining to the hearing.

The civil procedure rules of the National Oceanic and Atmospheric Administration currently set forth in 15 CFR Part 904, Subpart C, (or as subsequently amended), apply to the course of the hearing subsequent to commencement of the proceeding (pursuant to § 619.5) and prior to administrative appeal (§ 619.7), *except* that the following sections shall not apply:

15 CFR 904.201 (Definitions);
15 CFR 904.206(a)(1) (Duties and powers of Judge); and
15 CFR 904.272 (Administrative review of decision).

§ 619.7 Administrative appeal.

(a) *Right of appeal.* Within twenty (20) days after receiving the recommended decision, either party may appeal the decision to the Administrator. Any such appeal shall be made in writing and shall include a concise explanation of any factual or legal errors the party believes were made by the administrative law judge, and any alternative findings the party proposes that the Administrator make. A copy of the appeal shall be sent to the opposing party.

(b) *Response.* The opposing party shall have ten (10) days from receipt of a copy of the appeal in which to respond in writing. There shall be no further right of reply.

(c) *Administrator's authority.* Upon consideration of any such appeal, and response thereto, the Administrator may, on the basis of the hearing record and any materials submitted with respect to the appeal:

(1) Remand the case to the administrative law judge for such further proceedings as may be appropriate, along with a statement of reasons for the remand;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Accept or reject any of the findings or conclusions of the administrative law judge and submit a recommendation to the Secretary.

(d) *Recommendation to the Secretary.* If no appeal is filed, the Administrator shall promptly certify the hearing record and a recommendation to the Secretary. If an appeal is filed and the Administrator acts pursuant to paragraph (c)(3) of this section, the Administrator shall promptly certify the hearing record, any appeal record and his recommendation to the Secretary.

§ 619.8 Secretary's decision.

(a) *Secretary's authority.* Based upon the hearing record, any appeal record, and the Administrator's recommendation, the Secretary shall decide whether the factual findings exist for Federal preemption of a State's authority within its boundaries (other than in internal waters) with respect to the fishery in question, or whether to remand the case to the Administrator for further proceedings as may be appropriate.

(b) *Notification.* (1) If the Secretary determines that the factual findings for Federal preemption exist, he shall notify in writing the Governor of that State and the appropriate Council of his preemption of that State's authority. The Secretary shall also direct the Administrator to promulgate appropriate regulations proposed pursuant to § 619.5(d), and otherwise to begin regulating the fishery within the State's boundaries.

(2) If the Secretary determines that the factual findings for Federal preemption do not exist, he shall notify in writing the Governor of that State and the appropriate Council of his determination. The Secretary shall also direct the Adminstrator to issue a notice withdrawing the regulations proposed pursuant to § 619.5(d).

§ 619.9 Application for reinstatement of State authority.

(a) *Application or notice.* At any time after the promulgation of regulations under § 619.8(b)(1) to regulate a fishery within a State's boundaries, the affected State may apply to the Secretary for reinstatement of State authority, or the Secretary may of his own initiative serve upon such State a notice of intent to terminate such Federal regulation. A State's application shall include a clear and concise statement of (1) the action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the fishery management plan, or (2) any changed circumstances which affect the relationship of the State's action or omission to take action to the carrying out of the fishery management plan; and (3) any laws, regulations or other materials which the State believes support the application.

(b) *Informal response.* If the Secretary determines that the application does not raise substantial and material issues of fact, he may accept or reject the application in his discretion. If the Secretary accepts the application and finds that the reasons for which he assumed regulation of the fishery within the boundaries of the State no longer prevail, he shall promptly terminate such regulation and publish any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* Whenever the Secretary determines that the application raises substantial and material issues of fact, he may direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence shall be conducted in accordance with § 619.6. Upon conclusion of such hearings, the administrative law judge shall certify the record and his recommended decision to the Administrator. Upon consideration of the State's application, the hearing record, and any other relevant material, the Administrator shall recommend to the Secretary his determination. If the Secretary finds that the reasons for which he assumed regulation of the fishery within the boundaries of the State no longer prevail, he shall promptly terminate such regulation and shall publish any regulatory amendments necessary to accomplish that end.

PART 621—CIVIL PROCEDURES

Subpart A—Introduction

Sec.
621.1 Purpose and scope.
621.2 Enforcement policy.
621.3 Filing and service of documents.
621.4 Definitions.

AUTHORITY: 16 U.S.C. 1801-1882.

Subpart A—Introduction

§ 621.1 Purpose and scope.

(a) Section 308 of the Act authorizes the Secretary to assess a civil penalty, in an amount not to exceed $25,000, for each violation against any person found to have committed an act prohibited by section 307. Each day of a continuing violation is considered a separate offense. The Administrator has been delegated the authority to assess these administrative money penalties.

(b) Section 204(b)(12) of the Act details the circumstances under which the Administrator is to revoke, suspend, or modify certain foreign fishing vessel permits. Regulations implementing specific fishery management plans contain provisions for permit sanctions in respect both to foreign and domestic fishing vessels.

(c) Section 310(c) of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures and the compromise of claims, applicable to forfeitures of fishing vessels and fish alleged to be authorized under the Act. The Department of Commerce is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

[45 FR 18932, Mar. 24, 1980, as amended at 50 FR 12785, Apr. 1, 1985]

§ 621.2 Enforcement policy.

(a) The Act provides four basic enforcement remedies for violations, in ascending order of severity as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR Part 904 Subpart E);

(2) Assessment by the Administrator of a civil money penalty;

(3) For certain violations, judicial forfeiture action against the vessel and its catch; and

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of the Agency to enforce vigorously and equitably the provisions of the Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in remedying a violation by removing the ill-gotten gains of the offense (see paragraph (d) of this section).

(c) If a fishing vessel for which a permit has been issued under the Act is used in the commission of an offense prohibited by section 307 of the Act, the Agency may impose permit sanctions whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

[45 FR 18932, Mar. 24, 1980, as amended at 50 FR 12785, Apr. 1, 1985; 50 FR 36435, Sept. 6, 1985]

§ 621.3 Filing and service of documents.

(a) Whenever the regulations in this part require service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served. Refusal by the person to be served, or his or her agent or attorney, of service of a document or other paper shall be considered effective service of the document or other paper as of the date of such refusal.

(b) Whenever the regulations in this part or in an order issued hereunder require a document or other paper to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods shall begin to run on the day following the date of the document, paper, or event which begins the time period and, unless otherwise provided by law or these regulations, includes the last day of the period, unless such day is a Saturday, Sunday, or Federal holiday, in which event it includes the next following day which is not a Saturday, Sunday, or Federal holiday.

(c) If an oral or written application is made to the Administrator within 10 calendar days after the expiration of a time period established in this part for the required filing of documents or other papers, the Administrator may permit a late filing if he or she finds reasonable grounds for an inability or failure to file within the time period. All such extensions shall be in writing. Except as provided in this paragraph, by § 621.22, or by order of an administrative law judge under Subpart C of this part, no requests for an extension of time may be granted.

[45 FR 18932, Mar. 24, 1980]

§ 621.4 Definitions.

Unless the context otherwise requires, terms in these regulations have the meanings prescribed in section 3 of the Act, and special reference is made to the following terms: "Fishery conservation zone," "fishery resource," "fishing vessel," and "Secretary." In addition, the following definitions apply:

(a) *Act.* Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 to 1882.

(b) *Administrator.* Administrator, National Oceanic and Atmospheric Administration, or his or her designee.

[45 FR 18932, Mar. 24, 1980]

PART 630—ATLANTIC SWORDFISH FISHERY

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 50 FR 33956, Aug. 22, 1985, unless otherwise noted.

EFFECTIVE DATE NOTE: Part 630 was revised at 50 FR 33956, Aug. 22, 1985, effective September 18, 1985 through December 31, 1987. Section 630.4 becomes effective January 1, 1986.

Subpart A—General Provisions

§ 630.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Atlantic Swordfish Fishery prepared by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for swordfish by persons fishing on vessels of the United States shoreward of the seaward boundary of the fishery conservation zone (FCZ) in the Atlantic, Gulf of Mexico, and Caribbean.

(c) Regulations governing fishing by vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and §§ 611.60 and 611.61.

§ 630.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Carcass means a fish that has been gutted and the head and fins have been removed (dressed).

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149; Telephone 305-361-5761, or a designee.

Commercial fisherman means a person who sells, trades, or barters any part of his or her catch of fish.

Councils means the following Regional Fishery Management Councils:

(a) South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina 29407-4699, telephone, 803-571-4366;

(b) New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906;

(c) Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901;

(d) Caribbean Fishery Management Council, Suite 1108 Banco de Ponce Building, Hato Rey, Puerto Rico 00918; and

(e) Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

Dressed weight (carcass weight) means the weight of a carcass after the fish is gutted and the head and fins are removed.

Fish in these regulations refers to the swordfish, *Xiphias gladius.*

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Gangion means one of the lines that bear hooks and which is attached at intervals along the main line of a longline. (Synonymous with leader.)

Gill net or *drift entanglement net* means a flat net suspended vertically in the water having meshes that entangle the head or other body parts of fish that attempt to pass through the net.

Handline gear means a fishing line set and pulled by hand that remains attached to the boat during fishing.

High flyer means a vertical pole that projects above the water attached to a longline that serves to mark its location.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Official number means the official documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any character of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water column above the bottom from lines attached to surface floats and to which gangions and hooks are attached.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Radio buoy means a buoy attached to a longline which transmits a radio signal for purposes of marking its location.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813-893-3141, or a designee.

Rod and reel fisherman means any individual using a hand-held (includes rod-holder) fishing rod with a manually or electrically operated reel attached.

Secretary means the Secretary of Commerce or a designee.

Swordfish means a fish of the species *Xiphias gladius.*

U.S. fish processors means facilities located within the United States for, and vessels of the United States, used for or equipped for, the processing or distribution of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Variable season closure (*VSC*) means the annual periods of closure for swordfish fishing in the five management areas as defined at § 630.21(a).

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

Western North Atlantic swordfish stock means those swordfish in Food and Agricultural Organization statistical reporting areas 21 and 31. This area is bounded on the west by the North, Central, and South American land masses and on the east by a line running from the eastern coast of South America at 5°00′ N. latitude out to 40°00′ W. longitude, north to 36°00′ N. latitude, west to 42°00′ W. longitude, north to 59°00′ N. latitude, west to 44°00′ W. longitude, and continuing north to Greenland.

Whole fish means a fish that is not gutted and the head and fins are intact.

[50 FR 33956, Aug. 22, 1985; 50 FR 35563, Sept. 3, 1985]

§ 630.3 Relation to other laws.

Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities. Certain responsibilities relating to enforcement and data collection may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 630.4 Vessel permits.

(a) *General.* Effective January 1, 1986, a vessel of the United States fishing for, possessing, retaining, or landing swordfish for sale, trade, or barter, or any commercial longline fishing vessel of the United States with a bycatch of swordfish, whether or not retained for sale, trade, or barter, operating in the Atlantic, Gulf of Mexico, or Caribbean FCZ must have onboard at all times the permit required by this part. Vessels fishing handline gear in the Caribbean and any vessels fishing rod and reel gear in the FCZ are exempt.

(b) *Application.* An application for a fishing vessel permit under this section must be submitted by the vessel owner or operator on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director and must contain the following information:

(1) Owner's name, mailing address, and telephone number;

(2) Vessel name, net tons, and length;

(3) Home port;

(4) State registration or Coast Guard documentation number;

(5) Target species;

(6) Gear type(s);

(7) Average trip length (in days); and

(8) Monthly distribution of fishing by area (e.g., Gulf of Mexico).

(c) *Issuance.* (1) Upon receipt of a properly completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following date of notification, the application will be considered abandoned.

(d) *Expiration.* A permit expires on December 31 of each year.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and vessel owner for which it is issued.

(i) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any authorized officer.

(j) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act has not been paid.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear type, must be reported to the Regional Director within 15 days of the change. If there is a change in vessel owner, the vessel may not fish for swordfish until a new permit has been issued.

(Approved by the Office of Management and Budget under OMB control number 0648-0149)

EFFECTIVE DATE NOTE: Section 630.4, revised at 50 FR 33957, Aug. 22, 1985, will be effective from January 1, 1996 through December 31, 1987.

§ 630.5 Reporting requirements.

Owners or operators of vessels of the United States who have been issued a permit under § 630.4 to fish for swordfish in the Caribbean and land swordfish in Puerto Rico or the U.S. Virgin Islands must report their catch to the Center Director by individual carcass weight by providing copies of their weigh-out sheets for all swordfish landed.

EDITORIAL NOTE: Section 630.5 was issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements. When OMB approval is received, a notice will be published in the FEDERAL REGISTER making this section effective on September f18, 1985.

§ 630.6 Vessel identification.

(a) *Official number.* A vessel of the United States engaged in the commercial swordfish fishery shoreward of the seaward boundary of the FCZ in the Atlantic Ocean, Gulf of Mexico or Caribbean Sea must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels, or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, its fishing gear, or anything carried aboard obstructs the view of the official number from any enforcement vessel or aircraft.

§ 630.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish for, possess, retain, or land swordfish without a valid permit required under § 630.4 aboard the vessel;

(2) Purchase, sell, barter, or trade any swordfish taken by a vessel that does not have a valid permit required under § 630.4;

(3) Falsify or fail to report information required to be submitted or reported as specified in § 630.5;

(4) Falsify or fail to affix and maintain vessel markings as required by § 630.6;

(5) Fish for, possess at sea shoreward of the outer boundary of the FCZ, or land swordfish in closed areas specified in § 630.21(a), except as provided in § 630.21(b);

(6) Land swordfish harvested in the commercial fishery except as specified under § 630.22;

(7) Fish in closed areas with pelagic longlines at times other than as specified in § 630.23(a);

(8) Possess swordfish in a closed area during a seasonal closure specified in § 630.21(a) aboard a vessel having gear other than harpoons, rod and reel, or (in the Caribbean area only) handlines capable of taking swordfish;

(9) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(10) Fail to comply immediately with enforcement and boarding procedures specified in § 630.8;

(11) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(12) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(13) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken swordfish or the disposition of such swordfish through the sale of the swordfish;

(14) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(11) of this section;

(15) Resist a lawful arrest for any act prohibited by this part;

(16) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part; or

(17) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested swordfish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested swordfish.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 630.8 Facilitation of enforcement.

(a) *General.* The operators or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signs, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessels signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop instantly.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer provide a manrope or safety line, and illumination for the ladder, and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" (. —, . —)[1] repeated is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2)"RY-CY" (. — ., —.— — —, — .— ., — .— —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (..., — — . —, . . . — —) means "you should stop or heave to; I am going to board you."

(4) "L" (. — . .) means "you should stop your vessel instantly."

§ 630.9 Penalties.

Any person or fishing vessel found to be in violation of this part, the Magnuson Act, or any other regulation issued under the Magnuson Act is subject to the civil and criminal penalty provisions of the Magnuson Act, and to 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 630.20 Fishing year.

The fishing year is January 1 through December 31.

§ 630.21 Seasonal closures.

(a) *General.* Except as allowed by paragraph (b) of this section, no person may fish for, possess at sea, or land swordfish in the following areas during the variable seasonal closures (VSC) implemented by notice in the FEDERAL REGISTER under paragraph (c) of this section.

(1) New England and Mid-Atlantic area from the United States-Canada border to Cape Hatteras, North Carolina (35°15′ N. latitude);

(2) South Atlantic area from Cape Hatteras, North Carolina (35°15′ N. latitude) south to the Georgia-Florida border (30°42′ N. latitude);

(3) Florida East Coast area from the Georgia-Florida border (30°42′ N. latitude) south and then west to a line that begins at the intersection of the outer boundary of the FCZ and 83°00′ W. longitude, proceeds north to 24°35′N. latitude, east to Marquesas Key, then through the Florida Keys and ends at the mainland;

(4) Gulf of Mexico area from a line that begins at the intersection of the outer boundary of the FCZ and 83°00′ W. longitude, proceeds north to 24°35′ N. latitude, east to Marquesas Key, then through the Florida Keys and ends at the mainland west to the Texas-Mexico border; and

(5) Caribbean area shoreward of the outer boundary of the FCZ adjacent to Puerto Rico and the U.S. Virgin Islands.

(b) *Exceptions.* Paragraph (a) of this section does not apply to the following:

(1) Swordfish greater than 125 pounds dressed weight that were harvested by harpoon. Fish must remain whole or as carcasses until landed;

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[1] (.) means a short flash of light; (—) means a long flash of light.

(2) Swordfish harvested by rod and reel that are not traded, bartered, or sold; or

(3) Swordfish harvested with handline gear in the Caribbean area. A maximum of one swordfish per trip is allowed and may be sold in the Caribbean.

(c) *Adjustments.* [Reserved]

§ 630.22 Harvest limitations.

Swordfish harvested from the Western North Atlantic swordfish stocks in the commercial fishery must be landed in whole or dressed form.

§ 630.23 Gear limitations.

The following gear limitations apply within closed areas specified in § 630.21:

(a) Fishing with pelagic longlines and drift entanglement nets may be conducted only between 0500 and 1800 hours local time. Possession of swordfish is prohibited. Swordfish caught with longlines must not be removed from the water.

(b) All swordfish caught incidental to a directed fishery for other species must be released in such a manner as to ensure maximum probability of survival.

(c) Vessels landing or possessing swordfish cannot have aboard gear other than harpoons, rod and reel, or (in the Caribbean area only) handlines capable of harvesting swordfish. Such prohibited gear would include, but not be limited to, nets and longline gear including gangions, high flyers, and radio buoys. Longline reels are allowed aboard provided there are no gangions, high flyers, or radio buoys aboard.

§ 630.24 Specifically authorized activities.

The Secretary may authorize for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

638.1 Purpose and scope.
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638.7 Penalties.

Subpart B—Management Measures

638.20 Seasons.
638.21 Harvest limitations.
638.22 Area, time limitations.
638.23 Gear limitations.
638.24 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 29608, July 23, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 638.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP) developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for coral and coral reefs by fishing vessels of the United States within the fishery conservation zone (FCZ) off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

§ 638.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means—

(a) Any commissioned, warrant or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of the department under which the U.S. Coast Guard is operating, to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-361-5761.

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hard bottoms.

Fish means: (a) The hard and soft corals of the class Hydrozoa (stinging and hydrocorals), and the class Anthozoa (sea fans, whips, precious corals, sea pens, and stony corals); and

(b) All finfish, mollusks, crustaceans, and all other forms of marine animal and plant life in the context of use of any of the following means of fishing or collecting fish:

(1) Toxic chemicals,

(2) Bottom longlines,

(3) Traps,

(4) Pots,

(5) Bottom trawls, or

(6) Dredges.

Fishery conservation zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

HAPC means coral habitat areas of particular concern.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*)

Management area means that area of the FCZ off the South Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Prohibited coral means (a) species of coral belonging to the Class Hydrozoa (fire corals and hydrocorals) and Class Anthozoa, Subclass Zooantharia (stony corals and black corals), and Subclass Octocorallaria (the seafans *Georgonia flabellum* or *G. ventalina*), and (b) all coral and coral reefs in the HAPC's.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141; or a designee.

Scientific and educational purpose means for the purpose of gaining knowledge of coral for management and/or for the benefit of science and humanity.

Secretary means the Secretary of Commerce or a designee.

Take means to attempt to or damage, harm, kill, or collect.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 638.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) These regulations do not apply within the FCZ portion of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45);

(2) Looe Key National Marine Sanctuary (15 CFR Part 937);

(3) Fort Jefferson National Monument (36 CFR 7.27);

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR Part 929);

(5) Biscayne National Park (16 U.S.C. 410gg);

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(7) Monitor Marine Sanctuary (15 CFR Part 924);

(c) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State and the Secretary.

§ 638.4 Permits and fees.

(a) *General.* Permits are required for persons—

(1) Fishing for prohibited coral; or

(2) Using toxic chemicals to collect fish or other marine organisms in coral areas. A State of Florida permit is acceptable in lieu of a Federal permit for use of toxic chemicals.

(b) *Eligibility.* Fishing for prohibited coral must be for a scientific or educational purpose.

(c) *Fees.* There are no fees for Federal permits.

(d) *Application for a prohibited coral permit.* An application for a permit to fish for prohibited coral must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone nmber of applicant;

(2) Name and address of harvester, company, institution, or affiliation;

(3) Amount of coral to be fished for by species;

(4) Size of each species;

(5) Projected use of each species;

(6) Collection techniques (vessel types, gear, number of trips);

(7) Period of fishing; and

(8) Location of fishing.

(e) *Application for toxic chemical permit.* An application for a Federal permit to collect fish or other organisms with toxic chemicals in coral areas must be signed and submitted by the applicant on an appropriate form which may be obtained from the Regional Director. Applicants must provide the following information:

(1) Name, address, and telephone number of applicant;

(2) Name and address of harvester, if other than applicant;

(3) Type of chemical;

(4) Period of fishing; and

(5) Location of fishing.

(f) *Permit conditions.* (1) Permits may not be transferrred or assigned;

(2) Permits must be in the possession of the permittee while fishing for prohibited corals or using toxic chemicals;

(3) Permits must be presented for inspection upon request of any authorized officer;

(4) Permittee must have in possession sufficient documentation to establish identity as permittee (e.g., valid driver's license, etc.); and

(5) Other specific conditions as may be listed on the permits.

(g) Unless otherwise specified, application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires to have the permit effective and permits will be issued for the period October 1 through the following September.

(h) All persons holding permits to take prohibited corals for scientific or educational purposes must submit annual reports of their harvest to the Center Director within 30 days following the effective period for the permit. Specific reporting requirements will be provided with the issued permit.

(The information collection requirements contained in paragraph (g) were approved by the Office of Management and Budget under control number 0648-0097. The information collection requirements contained in paragraph (h) were approved under number 0648-0136.)

§ 638.5 Prohibitions.

It is unlawful for any person to—

(a) Fail to submit a report within 30 days following the effective period for a permit as specified in § 638.4;

(b) Take or collect fish or other marine organisms with toxic chemicals in coral areas except with a permit as specified in § 638.4;

(c) Fish for prohibited coral except as specified in § 638.4 and § 638.21;

(d) Fail to comply immediately with enforcement and boarding procedures specified in § 638.6;

(e) Use bottom longlines, traps, pots, bottom trawls, or dredges in an HAPC as specified in § 638.22;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, trade, or export any coral taken or retained in violation of the Magnuson Act, this part, or any other regulation or permit issued to a foreign vessel under the Magnuson Act;

(g) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(h) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (g) of this section;

(i) Resist a lawful arrest for any act prohibited by this part;

(j) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(k) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorized the receipt by such vessel of the U.S.-harvested fish of the species concerned; and

(l) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 638.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visability conditions allow, loudhailer is the preferred method for communication between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radio telephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radio-telephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer; provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radio telephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.-.-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radio telephone or by illuminating the vessels identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 29608, July 23, 1984; 49 FR 40415, Oct. 16, 1984]

§ 638.7 Penalties

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 638.20 Seasons.

The fishing year for all species of coral and coral resources begins at

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

0001 hours on October 1 and ends at 2400 hours on September 30.

§ 638.21 Harvest limitations.

(a) No person may fish for prohibited coral or fish with toxic chemicals in any coral area unless such person has in possession a valid permit issued under § 638.4

(b) Prohibited coral taken as incidental catch to other fishing activities must be returned to the water in the general area of fishing as soon as possible. In those fisheries, such as scallops and groundfish, where the entire catch is landed, unsorted prohibited coral may be landed but not sold or traded.

§ 638.22 Area, time limitations.

The following coral HAPCs are established.

(a) *West and East Flower Garden Banks:* The geographical center point of the West Flower Garden Bank (Figures 1A and 1B) is located at 27°52'14.21"N., latitude, 93°48'54.79"W. longitude. The geographical center point of the East Flower Garden Bank, (Figures 1A and 1B) is located at 27°55'07.44"N., latitude, 93°36'08.49"W. longitude. The HAPC is limited to the portions of each bank shallower than the 50 fathom (300 foot) isobath. The following restrictions apply within the West and East Flower Garden Bank HAPC:

(1) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(2) Fishing with bottom longlines, traps, pots, and bottom trawls is prohibited in the area less than 50 fathoms (300 feet) in depth.

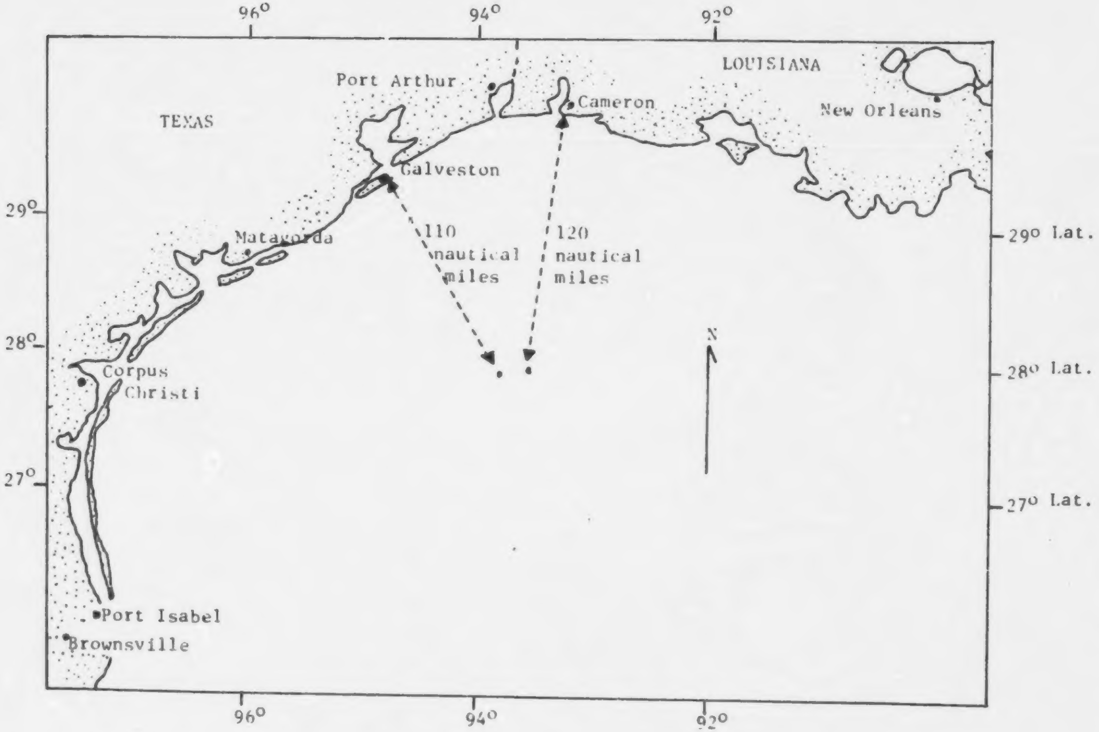
96°
94°
92°
LOUISIANA
Port Arthur
Cameron
New Orleans
TEXAS
Galveston
29°
29° Lat.
110 nautical miles
120 nautical miles
Matagorda
28°
N
28° Lat.
Corpus Christi
27°
27° Lat.
Port Isabel
Brownsville
96°
94°
92°

Figure 1A EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

(Map for illustrative purposes only NOT TO SCALE)

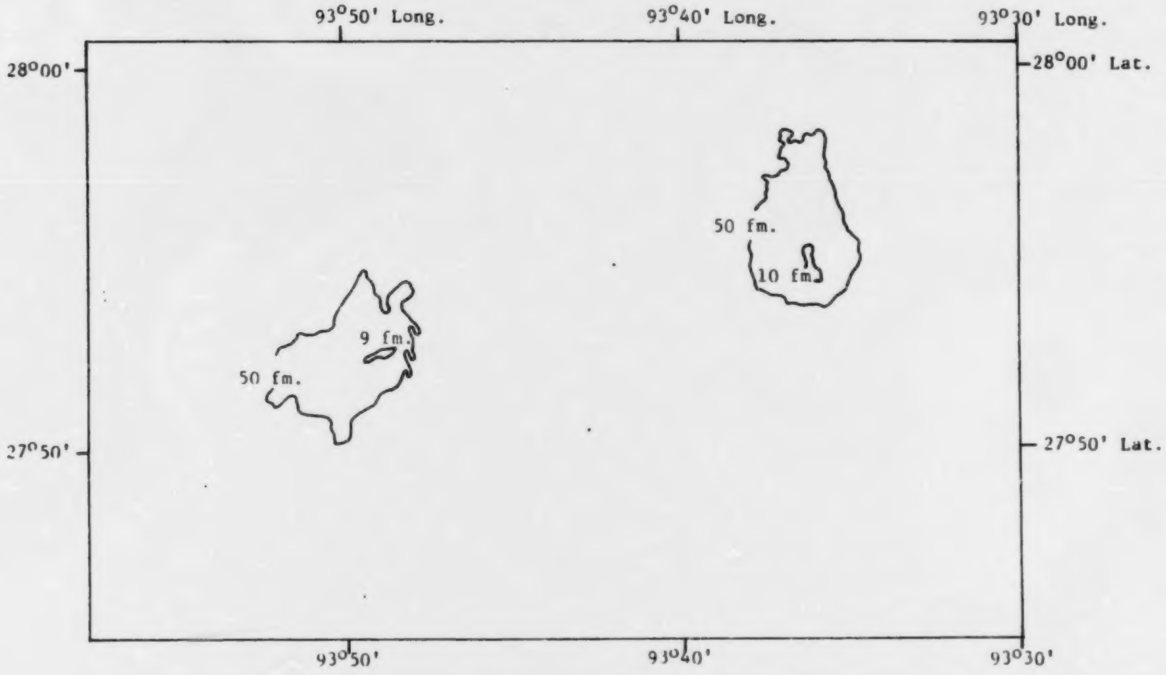
93°50' Long.
93°40' Long.
93°30' Long.
28°00'
28°00' Lat.
50 fm.
10 fm.
9 fm.
50 fm.
27°50'
27°50' Lat.
93°50'
93°40'
93°30'

Figure 1B EAST AND WEST FLOWER GARDENS HABITAT AREAS OF PARTICULAR CONCERN

(Map for illustrative purposes only NOT TO SCALE)

589

(b) *Florida Middle Grounds.* (1) The area (Figure 2) is bounded by straight lines connecting the following points.

POINT

A—28°42.5′N., latitude, 84°24.8′W. longitude
B—28°42.5′N., latitude, 84°16.3′W. longitude
C—28°11.0′N., latitude, 84°0.0′W. longitude
D—28°11.0′N., latitude, 84°7.0′W. longitude
E—28°26.6′N., latitude, 84°24.8′W. longitude
A—28°42.5′N., latitude, 84°24.8′W. longitude

(2) The following restrictions apply within the Florida Middle Grounds HAPC:

(i) Fishing for coral is prohibited except as authorized by a permit issued under § 638.4, and

(ii) Bottom longlines, traps, pots, and bottom trawls may not be fished within the area.

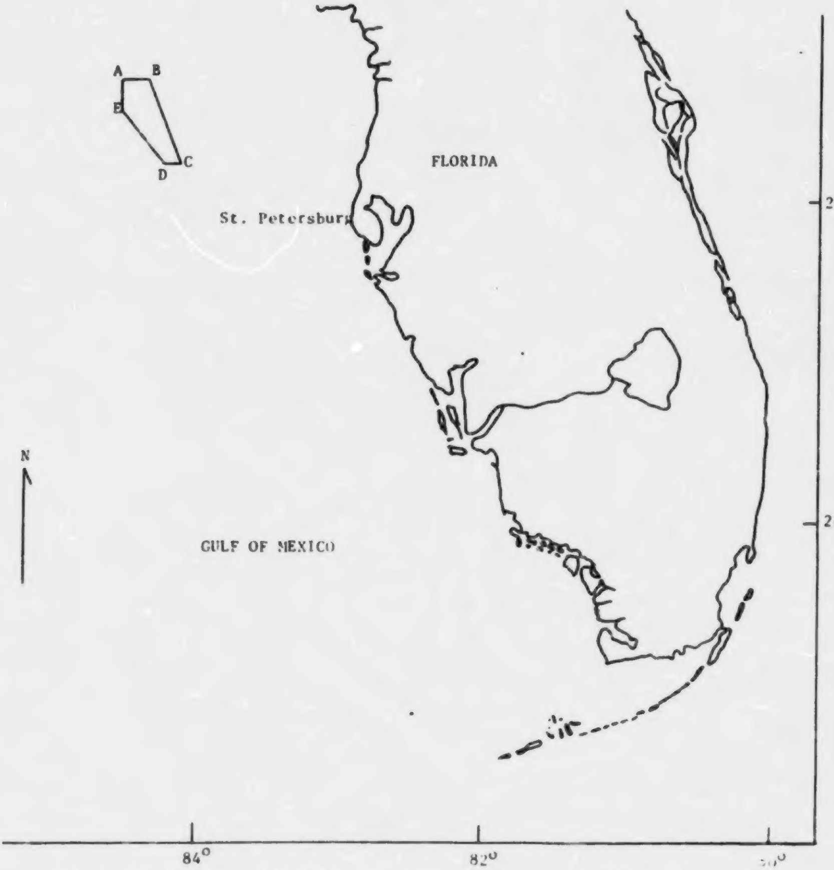

Figure 2. Florida Middle Grounds Habitat Area of Particular Concern
(Map for illustrative purposes only NOT TO SCALE)

(c) The *Oculina* Bank: The area (Figure 3) is located approximately 15 nautical miles east of Fort Pierce, Florida, at its nearest point to shore. The area is bounded on the north by 27°53′N., latitude; on the south by 27°30′N., latitude; on the east by 79°56′W. longitude; and on the west by 80°0′W. longitude. The following restrictions apply within the *Oculina* Bank HAPC: fishing with bottom longlines, traps, pots dredges, and bottom trawls is prohibited.

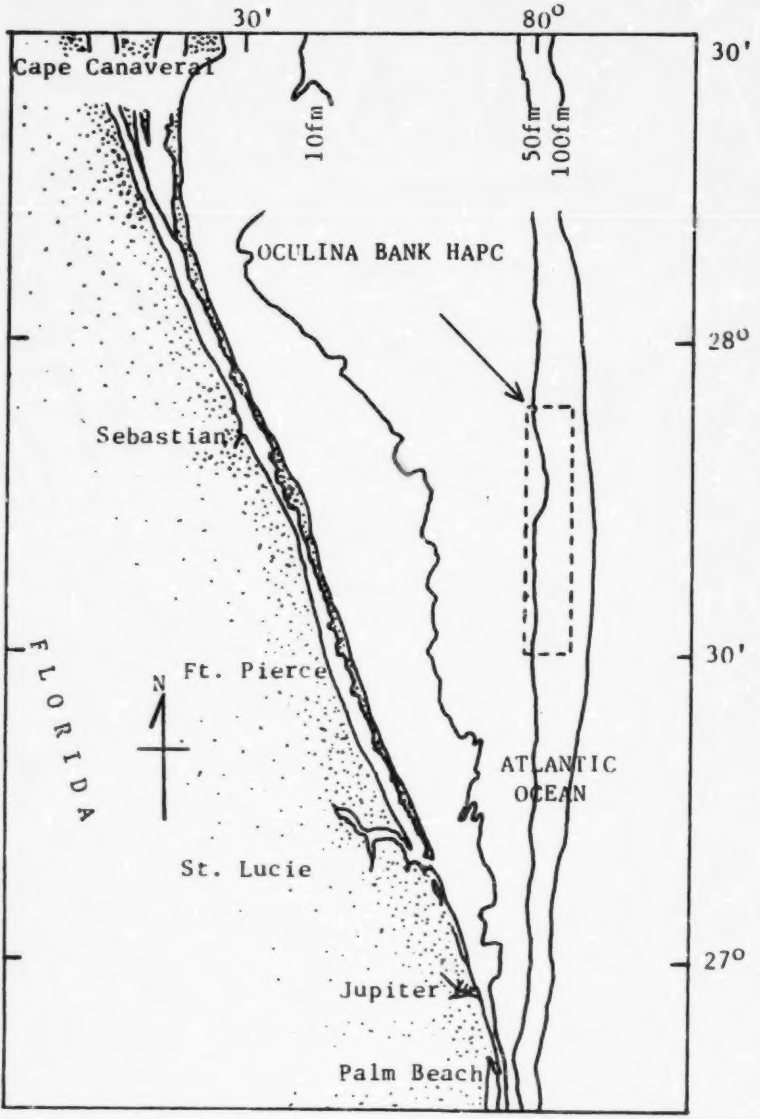
30'
80°
30'
Cape Canaveral
10fm
50fm
100fm
OCULINA BANK HAPC
28°
Sebastian
30'
Ft. Pierce
N
FLORIDA
ATLANTIC
OCEAN
St. Lucie
27°
Jupiter
Palm Beach

Figure 3. Oculina Bank Habitat Area of Particular Concern

(Map for illustrative purposes only NOT TO SCALE)

[49 FR 29608, July 23, 1984; 49 FR 31427, Aug. 7, 1984]

§ 638.23 Gear limitations.

Toxic chemicals may not be used in taking fish or other marine organisms in or on coral reef areas except as may be specified by a permit issued under § 638.4.

§ 638.24 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

640.1 Purpose and scope.
640.2 Definitions.
640.3 Relation to other laws.
640.4 Vessels, permits, and fees.
640.5 Recordkeeping and reporting. [Reserved]
640.6 Gear and vessel identification.
640.7 General prohibitions.
640.8 Enforcement.
640.9 Penalties.

Subpart B—Management Measures

640.20 Seasons.
640.21 Harvest limitations.
640.22 Size limitations.
640.23 Gear limitations.
640.24 Authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*.

SOURCE: 47 FR 29203, July 2, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 640.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Alantic developed by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act. The regulations in this part govern fishing for spiny lobster by vessels of the United States within the FCZ in the Atlantic Ocean and Gulf of Mexico along the coast of the South Atlantic States from the Virginia/North Carolina border south and through the Gulf of Mexico.

§ 640.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Carapace length means a head-length measurement taken from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax (Figure 1).

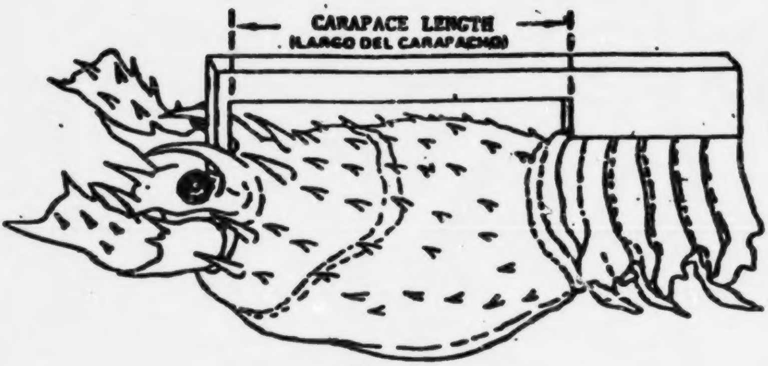

Figure 1

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-361-5761.

Commercial fisherman means a fisherman who sells all or any part of his catch.

Degradable panel means a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap.

Fish includes the spiny lobster, *Panulirus argus*.

Fishery conservation zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Live box means a container used for holding live lobsters aboard a vessel.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Management area means that area of the FCZ adjacent to the territorial sea off the coasts of the States adjacent to the Gulf of Mexico and off the Atlantic Coast south of the Virginia-North Carolina border.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fisherman means a fisherman who does not sell any part of his catch.

Regional Director means the Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141, or his designee.

Secretary means the Secretary of Commerce or a designee.

Spiny lobster means the species *Panulirus argus.*

Tail length means the measurement, with the tail in a straight, flat position, from the anterior end of the exoskeleton ("shell") of the first abdominal (tail) segment to the tip of the closed tail.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under U.S. law; or

(b) A vessel under five net tons which is registered under the laws of any State.

§ 640.3 Relation to other laws.

(a) The regulations in this part apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic FCZ.

(b) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(c) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 640.4 Vessel permits and fees.

No permits are required for fishing vessels engaged in commercial fishing for spiny lobsters within the FCZ (but see vessel identification requirements in § 640.6(a)).

§ 640.5 Recordkeeping and reporting. [Reserved]

§ 640.6 Gear and vessel identification.

(a) Traps, buoys, and all vessels and boats engaged in the spiny lobster trap fishery must be identified by the number and color code issued by the Regional Director, or through Florida's identification system.

(b) An application for a Federal number and color code must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be sumbitted to the Regional Director 45 days prior to the date on which the applicant desires receipt of the number and color code.

(c) Vessels and boats engaged in the spiny lobster trap fishery must permanently and conspicuously display such color code and number in a manner as to be readily identifiable from the air and water; such color representation must be in the form of a circle at least 20 inches in diameter and the identification number must be at least 10 inches high.

(d) Each trap, unless part of a string of traps, must be marked by a floating buoy or a buoy designed to be submerged and automatically released at a certain time. Each string of traps must be marked with a buoy at each end of the string.

(e) Buoys must be of such color as to be easily distinguished, seen, and located; the identification number must be legible and at least 3 inches high on each buoy.

(f) Each trap, can, drum, or similar device must have a legible identification number at least 3 inches high permanently attached as in the case of buoys.

(g) All spiny lobster traps fished in the FCZ will be presumed to be the property of the most recently documented owner.

(h) Upon the sale or transfer of all or part of an owner's interest in spiny lobster traps which are fished in the FCZ, that owner must report the sale or transfer within 15 days to the Regional Director if the identification number and color code for those traps were issued by the Regional Director.

(i) Unmarked spiny lobster traps fished in the FCZ at any time are illegal gear, which may be disposed of in any appropriate manner by the Secretary or the Secretary's designee (including an Authorized Officer). Lines and buoys are considered part of the trap. If owners of these unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

§ 640.7 General prohibitions.

It is unlawful for any person to:

(a) Fish for spiny lobster without a vessel number, or falsify or fail to affix and maintain vessel and gear markings, as required by § 640.6;

(b) Fail to comply immediately with enforcement and boarding procedures specified in § 640.8;

(c) Place traps in the water or harvest spiny lobsters from traps before or after the dates specified in § 640.20(a);

(d) Harvest spiny lobster by methods other than traps during the closed season specified in § 640.20 (b) and (c);

(e) Possess spiny lobster or any parts thereof in the FCZ, except as specified in § 640.20;

(f) Retain on board or possess on land any berried lobster taken in the FCZ;

(g) Strip eggs from or otherwise molest any berried lobster;

(h) Pull or tend traps except during the hours specified in § 640.21(b);

(i) Willfully tend, open, pull, or otherwise molest another person's traps, except as provided in § 640.21(b);

(j) Catch or retain more lobsters during the special nontrap recreational fishery than are specified in § 640.21(c);

(k) Retain lobsters smaller than the minimum size, except as specified in § 640.22;

(l) Use traps without degradable panels, or prohibited gear or methods, as specified in § 640.23;

(m) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import without a proper bill of lading, land or export any spiny lobster or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(n) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(o) Forcibly assault, resist, oppose, impede, intimidate or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (n) of this section;

(p) Resist a lawful arrest for any act prohibited by this part;

(q) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(r) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of the U.S.-harvested fish of the species concerned; or

(s) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 640.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 640.9 Penalties.

Any person or fishing vessel committing or used in the commission of a

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 640.20 Seasons.

(a) *Trap fishery.* (1) The trap fishing season for spiny lobster begins on July 26, one hour before official sunrise, and ends March 31, one hour after official sunset. Traps may be placed in the water on or after July 21, but spiny lobsters may not be harvested until the beginning of the season. Traps must be removed prior to April 6; any spiny lobsters taken between April 1 and April 6 must be returned to the water unharmed.

(2) Traps in the management area during the period between 0001 hours April 6 and 2400 hours July 20 will be considered unclaimed or abandoned property and may be disposed of according to § 640.6(i).

(b) *Non-trap fishery.* The fishing season for other harvesting methods begins 0001 hours July 26 and ends 2400 hours March 31.

(c) *Non-trap recreational fishery.* There is a special non-trap recreational fishing season the first full weekend preceding July 21 from 0001 hours Saturday until 2400 hours Sunday.

(d) *Possession.* Spiny lobsters or any parts thereof may be possessed in the FCZ only during the seasons specified in paragraphs (a), (b), and (c) of this section, unless accompanied by a proper bill of lading or other proof indicating lawful harvest outside the FCZ.

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* All berried (egg-bearing) lobsters must be returned to the water unharmed. Berried lobsters may not be stripped of their eggs or otherwise molested. If found in a trap, a berried lobster may be retained in the trap if it is immediately returned to the water.

(b) *Pulling traps.* (1) Traps may be pulled or tended only during the period beginning one hour before official sunrise and ending one hour after official sunset.

(2) Traps may be pulled or tended only by the owner's vessel, unless the boat tending another person's trap has on board written consent of the trap owner.

(c) *Recreational catch.* During the two-day season described in § 640.20(c), the catch is limited to six lobsters per person per day, up to a maximum of 24 lobsters per boat per day.

§ 640.22 Size limitations.

(a) *Carapace length.* Except as provided in paragraph (b) of this section, spiny lobsters with a carapace length of 3.0 inches or less, or with a tail length of less than 5.5 inches, must be returned immediately to the water unharmed.

(b) *Attractants.* Live lobsters under the minimum size may be held in a shaded live box aboard a vessel for use as attractants in traps. No more than three undersized lobsters for each trap carried on board, or 200 undersized lobsters, whichever is greater, may be retained. Undersized lobsters to be used as attractants in traps may not be retained aboard vessels or boats that are docked.

§ 640.23 Gear limitations.

(a) *Degradable panel.* Traps constructed of material other than wood must have a panel constructed of wood, cotton, or other degradable material located in the upper half of the sides or on top of the trap, that, when removed, will leave an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(b) *Prohibited gear and methods.* (1) Spiny lobster may not be taken with spears, hooks, or similar devices, or gear containing such devices. In the FCZ, the possession of speared, pierced, or punctured lobsters is prima-facie evidence that prohibited gear was used to take such lobsters.

(2) Spiny lobsters may not be taken with poisons or explosives.

§ 640.24 Authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 39553, Oct. 9, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 641.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part regulates fishing for reef fish by persons on fixed structures and fishing vessels of the United States within the Gulf of Mexico portion of the FCZ.

§ 641.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of the department under which the U.S. Coast Guard is operating, to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fish trap means any trap and the component parts thereof used for or capable of taking finfish, regardless of the construction material, except those traps historically used in the directed fisheries for crustaceans (blue crab, stone crab, and spiny lobster).

Fishery conservation zone means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; and

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fork length means the distance from the tip of the snout to the rear center edge of the tail (caudal fin).

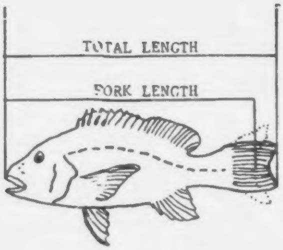

Figure 1. Illustration of fork length and total length measurement

Headboat means any fishing vessel operated by a master and crew which carries seven or more persons who fish for a fee.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et. seq.*).

Management area means that area of the FCZ subject to the authority of the Gulf of Mexico Fishery Management Council.

NMFS means the National Marine Fisheries Service.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporate, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

Reef fish refers to fish in the following two categories:

(a) *Management unit*—species in the directed fishery include the following:

Snappers—Lutjanidae Family

Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Gulf red snapper, *Lutjnus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Voraz, *Pristipomoides macrophthalmus*
Vermilion snapper, *Rhomboplites aurorubens*

Groupers—Serranidae Family

Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitalis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca veneosa*

Sea Basses—Serranidae Family

Southern sea bass, *Centropristis melana*
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*

(b) *Fishery*—species in the reef fishery that are taken incidental to the directed fishery for reef fish includes the following:

Tilefishes—Branchiostegidae Family

Great northern tilefish, *Lopholatilus chamaeleonticeps*
Tilefish, *Caulolatilus* spp.

Jacks—Carangidae Family

Amberjacks, *Seriola* spp.

Triggerfishes—Balistidae Family

Gray triggerfish, *Balistes capriscus*

Wrasses—Labridae Family

Hogfish, *Lachnolaimus aximus*

Grunts—Haemulidae Family

Tomtate, *Haemulon aurolineatum*
White grunt, *Haemulon plumieri*
Pigfish, *Orthopristis chrysoptera*

Porgies—Sparidae Family

Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*
Red porgy, *Pagrus sedecim*

Sand Perches—Serranidae Family

Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*

Regional Director means the Regional Director (or a designee), Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Roller trawl means a trawl net equipped with rollers on a separate cable or line with spacers connecting the cable or line to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Ridig framed trawls adapted for shrimping over uneven bottom, and in wide use along the west coast of Florida, are not considered roller trawls.

Secretary means the Secretary of Commerce or a designee.

Total length means the distance from the tip of the snout to the furthermost tip of the tail (caudal fin) depressed. (See Figure 1.)

U.S.-harvested fish means fish caught, taken or harvested by U.S. citizens on fixed structures and vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

[49 FR 39553, Oct. 9, 1984; 49 FR 43679, Oct. 31, 1984]

§ 641.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection or enforcement may be performed by authorized State personnel under cooperative agreements entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 641.4 Permits.

(a) *Applicability.* Fishing vessels from which fish traps are deployed and individuals fishing with fish traps from fixed structures are required to obtain a permit.

(b) *Application for permit.* An application for a fish trap permit must be submitted and signed by the owner or operator of the vessel or by the person fishing traps from a structure. The application must be submitted to the Regional Director 45 days prior to the date on which the applicant desires to have the permit made effective.

(1) Permit applicants fishing from vessels must provide all the following information:

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower and year the vessel was built;

(vi) Approximate fish hold capacity of the vessel;

(vii) Number, dimensions and estimated cubic volume of the fish traps that will be fished;

(viii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(ix) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(2) Applicants fishing from fixed structures must provide the following information:

(i) Applicant's name, mailing address, and telephone number;

(ii) Name and number of the oil or gas structure or the most descriptive identification for other types of structures;

(iii) Approximate location of the structure in miles offshore and direction from principal port or latitude and longitude of the structure;

(iv) Number, dimensions, and estimated cubic volume of the fish traps that will be fished; and

(v) A statement that the applicant will allow authorized officers reasonable access to his property (structure) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit and numbered tag(s) to the applicant not later than 30 days from the date of receipt of a completed application and will designate a color code to be used for identification of vessels fishing fish traps and buoys used by such vessels.

(d) *Fees.* No fee will be assessed for any permit issued under this section.

(e) *Duration.* Permits will remain valid unless revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Transfer.* A permit issued under this section is not transferable or assignable. A permit is valid only for the fishing vessel and owner, or the person fishing traps from a structure, for which it is issued.

(g) *Display.* A permit issued under this section must be carried on board the fishing vessel or on the fixed structure at all times. The operator of a fishing vessel, or the person fishing fish traps from a structure, must present the permit for inspection upon request of any authorized officer.

(h) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(Approved by the Office of Management and Budget under OMB control number 0648-0097)

§ 641.5 Recordkeeping and reporting requirements. [Reserved]

§ 641.6 Vessel and gear identification.

(a) Vessels and fixed structures from which fish traps are fished must identify, in conformance with this paragraph, the vessel or structure, fish traps and buoys by the number and/or color code designated by the Regional Director under § 641.4(c) of this part.

(1) *Vessels or structures.* Vessels or structures must permanently and conspicuously display the permit number and the color code designated by the Regional Director under § 641.4(c) of this part in a manner as to be readily identifiable from the air and water; such color representation must be in the form of a circle at least 20 inches in diameter and the permit number must be at least 10 inches high.

(2) *Fish traps.* Each fish trap must have affixed to it permanently a metal or plastic identification tag supplied by the Regional Director, which displays the assigned permit and fish trap number.

(3) *Buoys.* Each fish trap, or the opposite ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. All buoys used to mark fish traps must display the designated color code and permit number so as to be easily distinguished, located, and identified.

(b) Fish traps fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to reef fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(c) Unmarked reef fish traps deployed in the FCZ are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

§ 641.7 Prohibitions.

It is unlawful for any person to:

(a) Fish for reef fish with fish traps without a valid permit, as required by § 641.4;

(b) Fish for reef fish with fish traps without a valid permit number, or possess on board a fishing vessel (or structure) unmarked fish traps or buoys, or falsify, or fail to affix and maintain vessel (or structure) or gear markings as required by § 641.6;

(c) Pull or tend fish traps except during the hours specified in § 641.21(a);

(d) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 641.21(b);

(e) Use powerheads to fish for reef fish or use fish traps or roller trawls in the stressed area, as specified in § 641.22;

(f) Possess red snapper under the minimum size limit specified in § 641.23(a), except as specified in § 641.23(b);

(g) Possess red snapper in the FCZ, or land red snapper taken from the FCZ, without the head and fins intact as specified in § 641.23(c);

(h) Fish for reef fish with poisons or explosives, as specified in § 641.24(a);

(i) Fish with fish traps in the FCZ in areas other than the stressed area unless such traps are constructed as specified in § 641.24(b);

(j) Fish in the FCZ with more than 200 fish traps per vessel, as specified in § 641.25;

(k) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(l) Fail to comply immediately with enforcement and boarding procedures specified in § 641.8;

(m) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control or to come onto a structure for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(n) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (m) of this section;

(o) Resist a lawful arrest for any act prohibited by this part;

(p) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(q) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested reef fish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested reef fish; or

(r) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 641.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a man rope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and necessity for the vessel to stop instantly.

(1) "AA repeated." (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.-...--) means "you should stop or heave to; I am going to board you."

(4) "L (.-..) means "you should stop your vessel instantly."

[49 FR 39553, Oct. 9, 1984; 49 FR 41063, Oct. 19, 1984]

§ 641.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621 and 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 641.20 Fishing year.

The fishing year for reef fish begins on January 1 and ends on December 31.

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[1] (.) means a short flash of light.

[2] (-) means a long flash of light.

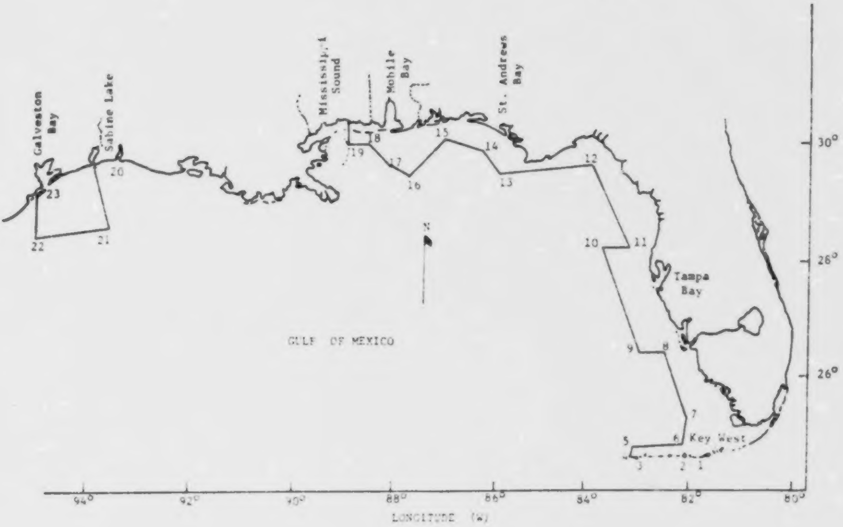
§ 641.21 Harvest limitations.

(a) Reef fish traps may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(b) Reef fish traps may be tended only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner.

§ 641.22 Area limitations.

The stressed area is that portion of the management area which is enclosed by the inner boundary of the FCZ and the discontinuous line connecting the points of latitude and longitude listed in Table 1 (also see Figure 2).


Galveston Bay
Sabine Lake
Mississippi Sound
Mobile Bay
St. Andrews Bay
Tampa Bay
Key West
GULF OF MEXICO
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28°
26°
94°
92°
90°
88°
86°
84°
82°
80°
LONGITUDE (W)

FIGURE 2. MAP OF THE STRESSED AREA

(a) The stressed area is closed to the use of powerheads for the taking of reef fish in the management unit. The possession of a powerhead and mutilated reef fish from the management unit while in the stressed area will constitute *prima facie* evidence that reef fish were taken with a powerhead in the stressed area.

(b) The stressed area is closed to the use of roller trawls and fish traps. Fish traps in the stressed area will be considered unclaimed or abandoned property and may be disposed of according to § 641.6(c).

TABLE 1—POINTS FOR THE DISCONTINUOUS LINE DELINEATING THE STRESSED AREA

Point No.	Reference location [1]	Latitude (North)	Longitude (West)	Loran C coordinates [2]			
				W	X	Y	Z
	Starting at the mainland of Florida at the Dade/Monroe county line and proceeding down the Florida Keys Island chain (as delineated by the highway U.S. Route 1) to the following points:						
1	Key West	24°33.0′	81°48.7′	13927.8	30238.2	43654.2	62655.1
2	Marquesas Key	24°35.0′	82°06.2′	13894.5	30189.2	43748.8	62726.6
3	Gulf/South Atlantic Boundary	24°35.0′	83°00.0′	13768.5	29992.2	44049.2	62941.1
4	Tortugas Bank South	24°36.0′	83°06.0′	13753.4	....	44084.4	62965.5
5	Tortugas Bank North	24°[illegible]4.0′	83°04.0′	13772.3	....	44087.4	62960.3
6	West of Smith Shoal	24°48.0′	82°06.5′	13915.1	....	43760.2	62727.7
7	Off Cape Sable	25°15.0′	82°02.0′	13974.7	....	43759.8	62704.9
8	Off Sanibel Island (Inshore)	26°26.0′	82°29.0′	14060.3	....	43117.4	62824.3
9	Off Sanibel Island (Offshore)	26°26.0′	82°59.0′	13990.0	....	43347.6	62970.7
10	Off Anclote Keys (Offshore)	28°10.0′	83°45.0′	14145.8	....	45328.0	63266.8
11	Off Anclote Key (Inshore)	28°10.0′	83°14.0′	14224.3	....	45092.0	63086.4
12	Off Deadman Bay	29°38.0′	84°00.0′	14412.4	....	45167.7	63442.2
13	SW of Cape San blas	29°30.5′	85°52.0′	13873.2	....	46702.0	63976.2
14	Off St. Andrews Bay	29°53.0′	86°10.0′	13816.5	....	46922.3	64050.8
15	Desoto Canyon	30°06.0′	86°55.0′	13434.6	30600.6	47045.8	....
16	Alabama/Florida line	29°34.5′	87°38.0′	12971.5	30023.4	46886.0	....
17	Off Mobile Bay	29°41.0′	88°00.0′	12766.5	29841.2	46930.9	....
18	Mississippi/Alabama line	30°01.5′	88°23.7′	12537.6	29697.[illegible]	47029.3	....
19	Chandeleur Islands	30°01.5′	88°51.0′	12262.0	29422.2	47028.6	....
	Closing at the Mississippi Mainland	30°23.4′	88°51.0′	and		....	....
	Starting at the west bank of Sabine Pass, Texas to the following points:						
20	Sabine Pass	29°39.0′	93°49.5′	11027.8	26367.1	46966.6	....
21	Texas/Louisiana line, south	28°38.0′	93°32.0′	11139.4	26220.7	46815.1	....
22	Off Galveston Island	28°28.0′	95°00.0′	11086.2	25108.9	46817.0	....
23	Off Galveston Island	29°09.5′	95°00.0′	11036.9	25551.4	46909.0	....

[1] Nearest identifiable landfall, boundary, navigation aid or submarine area.

[2] Loran coordinates are provided to aid the fishermen affected by the measures and are subject to local variations due to atmospheric conditions, therefore, are not used as part of the legal description of the stressed area.

[49 FR 39553, Oct. 9, 1984; 49 FR 43679, Oct. 31, 1984]

§ 641.23 Size and incidental catch restrictions.

(a) The minimum size limit for the possession of red snapper harvested in the FCZ is 12 inches fork length (13 inches total length), except as specified in paragraph (b) of this section.

(b) *Exceptions.* (1) An incidental catch of five red snappers under 12 inches fork length (13 inches total length) per person per trip is allowed.

(2) Persons fishing from headboats in the FCZ are exempt from the minimum size limit and incidental catch limit for red snapper until May 8, 1986.

(3) Persons lawfully fishing with trawls from domestic vessels in the FCZ are exempt from the minimum size limit for red snapper.

(c) All red snapper harvested in the FCZ must be landed with the head and fins intact.

§ 641.24 Gear limitations.

(a) Poisons or explosives may not be used in the taking of reef fish in the management unit; however, explosives in powerheads may be used outside the stressed area.

(b) Fish traps fished in the FCZ are subject to the following requirements and limitations:

(1) Fish traps are required to have panels or access door-hinging devices and door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials: (i) Untreated hemp, jute, or cotton string of $\frac{3}{16}$-inch diameter or smaller; (ii) magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners; or (iii) ungalvanized or uncoated iron wire at 0.055-inch diameter or smaller;

(2) The opening covered by the degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches;

(3) One degradable panel or access door must be located opposite each of the sides of the trap that has a funnel;

(4) Effective November 8, 1985, the minimum mesh size for all fish traps within the FCZ will be 1x2 inches, and a minimum of two 2x2-inch escape windows will be required on each of two sides of the trap; and

(5) The maximum allowable size for fish traps fished in the FCZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measurement of the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

[49 FR 39553, Oct. 9, 1984, as amended at 50 FR 11166, Mar. 20, 1985]

§ 641.25 Effort limitations.

The maximum number of fish traps that may be fished by a vessel in the FCZ is 200.

§ 641.26 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 5272, Feb. 4, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 642.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Coastal Migratory Pelagic Resources developed by the Gulf of Mexico and South Atlantic Fishery Management Councils under the Magnuson Act.

(b) This part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States within the fishery conservation zone off the Atlantic coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

§ 642.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part shall have the following meaning:

Acceptable biological catch (ABC) means a range of harvest levels computed from stock assessment parameters that sets forth the levels of harvest which can be taken from a stock or migratory group while maintaining the stock at or near maximum sustainable yield. ABC may vary due to fluctuating recruitment, fluctuating abundance, and intensity of fishing effort.

Allocation means that portion or percentage of the total allowable catch of a stock or migratory group of fish which is allocated to a specific user group for harvest during a fishing year. Harvest levels may be limited to an allocation by specifying harvest quotas or by specifying nonquota restrictions such as bag limits, etc.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Center Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-361-5761, or designee.

Charter vessel (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee.

Charter vessel crew means those individuals, including the licensed vessel captain, who receive monetary or other compensation from the vessel owner or from the passengers who are engaged in fishing from the vessel as anglers.

Coastal migratory pelagic fish means the following species:

King mackerel, *Scomberomorus cavalla*
Spanish mackerel, *Scomberomorus maculatus*
Cero mackerel, *Scomberomorus regalis*
Cobia, *Rachycentron canadum*
Little tunny, *Euthynnus alletteratus*
Dolphin, *Coryphaena hippurus*
Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only)

Commercial fisherman means a person who sells, trades, or barters any part of his catch of coastal migratory pelagic fish.

Dealer means the person who first receives or purchases fish directly from a commercial fisherman.

Fishery conservation zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fork length means the distance from the tip of the head to the center of the tail (caudal fin).

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Migratory group means a group of fish that may or may not be a separate genetic stock but which for management purposes may be treated as a separate stock. (See Figure 2 and § 642.29 for geographical and seasonal boundaries between migratory groups of king mackerel.)

NMFS means the National Marine Fisheries Service.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

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(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processor means a person who processes fish or fish products for commercial use or consumption.

Regional Director means the Regional Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone, 813-893-3141, or a designee.

Secretary means the Secretary of Commerce or a designee.

Species refers to the specific scientific name for each fish identified under the definition of *coastal migratory pelagic fish.*

Statistical area means one or more of the statistical grids depicted in Figure 3.

Total allowable catch (TAC) means the maximum permissible level of annual harvest specified for a stock or migratory group after consideration of the biological, economic, and social factors with such level being specified from within the range of acceptable biological catch.

Total length means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is laying on its side normally extended.

Trip means a fishing trip regardless of number of days duration which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

U.S. fish processor means a facility located within the United States for, and vessels, of the United States used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) Any vessel, under five net tons, that is registered under the laws of any State.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 34843, Aug. 28, 1985]

§ 642.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico and South Atlantic FCZ.

§ 642.4 Permits and fees.

(a) *Applicability.* Owners or operators of fishing vessels which fish for Gulf migratory group king mackerel under the commercial quotas are required to obtain an annual vessel permit. Owners or operators of charter vessels and headboats are excluded from eligibility for a vessel permit unless they will charter only in the Atlantic migratory group area.

(b) *Application for permits.* An application for a permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director or his designee within 60 days prior to July 1 of each year. Owners or operators of newly registered or documented vessels may submit an application at any time during a fishing year provided it is received by the Regional Director within 60 days after registration or documentation. In cases of demonstrated hardship the Regional Director may accept applications at other times. Permit applicants must provide the following information:

(1) Name, mailing address including zip code, and telephone number of the owner and the operator of the vessel:

(2) Name of vessel;

(3) The vessel's official number;

(4) Home port or principal port of landing, gross tonnage, radio call sign and length of vessel;

(5) Approximate fish hold capacity of the vessel;

(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the preceeding calendar year (January 1 through December 31), and that the vessel for which the permit is intended will not be operated as a charter vessel in an area in which the Gulf migratory group of king mackerel is occurring; and

(7) Any other information concerning vessel, gear characteristics and fishing area requested by the Regional Director.

(c) *Proof of certification.* The Regional Director or his designee may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(6) before a permit is issued or to substantiate why such a permit should not be revoked under paragraph (i).

(d) *Issuance.* The Regional Director or his designee will issue a permit to the applicant only during May and June of each year. The Regional Director will issue permits to newly registered or documented vessels, or cases of demonstrated hardship at other times, as found at paragraph (b) of this section. Until the permit is received, fishermen must comply with the bag limit under §642.28.

(e) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application from and will be limited to the administrative cost of issuing the permit which may not exceed $10.00.

(f) *Duration.* A permit is valid only for the duration of the year for which it is issued (July 1—June 30) unless revoked or suspended pursuant to Subpart D of 15 CFR Part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable except on sale of the vessel to a new owner. A permit is valid only for the fishing vessel for which it is issued. New owners purchasing a permitted vessel to fish under the Gulf migratory group quota must comply with the provisions of paragraph (b) of this section. The application must be accompanied by an executed (signed) bill of sale. New owners who have purchased a permitted vessel may fish with the preceeding owner's permit until a new permit has been issued, but for a period not to exceed 60 days from date of purchase.

(h) *Display.* A permit issued under this section must be carried aboard the fishing vessel, and the vessel must be identified as provided for in § 642.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this section.

(j) *Alteration.* Any permit which is altered, erased, or mutilated is invalid.

(k) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(Approved by the Office of Management and Budget under control number 0648-0097)

[50 FR 34844, Aug. 28, 1985]

§ 642.5 Reporting requirements.

(a) *Commercial vessel owners and operators.* Any person who owns or operates a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter, or that fishes under a permit required in § 642.4, in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report must provide the following information regarding any fishing trip to the Center Director:

(1) Name or official number of vessel;

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(2) Poundage of catch of any coastal migratory pelagic fish as defined by species;

(3) Depth fished and information regarding fishing location that is specific enough to enable the Center Director to ascertain the statistical area fished (see Figure 3);

(4) Amount and person to whom sold, bartered, or traded;

(5) Number, size and type of gear; and

(6) Period (hours or days) of fishing.

(b) *Charter vessel owners and operators.* Any person who owns or operates a charter vessel that fishes for or lands coastal migratory pelagic fish in the Gulf of Mexico FCZ or South Atlantic FCZ or adjoining State waters, and who is selected to report must maintain a daily fishing record on forms provided by the Center Director. These forms must be submitted to the Center Director weekly. Information to be included in the forms must include:

(1) Name or official number of vessel;

(2) Operator's Coast Guard license number;

(3) Date of trip;

(4) Number of fishermen on trip;

(5) Area fished;

(6) Fishing methods and type of gear;

(7) Hours fished;

(8) Species targeted; and

(9) Number and estimated weight of fish caught by species.

(c) *Dealers and processors.* Any person who receives coastal migratory pelagic fish or parts thereof by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for, or lands said fish, or parts thereof in the Gulf of Mexico FCZ or South Atlantic FCZ or in adjoining State waters, and who is selected to report, must provide the following information to the Center Director at monthly intervals, or more frequently if requested, and on forms provided by the Center Director:

(1) Dealers or processors name and address;

(2) County where fish were landed;

(3) Total poundage of each species received during that month, or other requested interval;

(4) Average monthly price paid for each species; and

(5) Proportion of total poundage landed by each gear type.

(d) *Recreational fishing vessels.* [Reserved]

(e) Any owner or operator of commercial, charter, or recreational vessels, and dealers or processors may be required upon request to make such fish or parts thereof available for inspection by the Center Director for the collection of additional information or for inspection by an authorized officer.

(Approved by the Office of Management and Budget under control numbers 0648-0016 and -0159)

[50 FR 34844, Aug. 28, 1985]

§ 642.6 Vessel identification.

(a) *Official number.* Each vessel of the United States engaged in commercial fishing for Gulf migratory group king mackerel under a quota and the permit specified in § 642.4 must—

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number must be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number must be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

[50 FR 34845, Aug. 28, 1985]

§ 642.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fail to comply immediately with enforcement and boarding procedures specified in § 642.8;

(2) Fish for king or Spanish mackerel in violation of any area closures or season closures as specified in § 642.22 or § 642.26;

(3) Possess in or harvest from the FCZ Spanish mackerel under the minimum size limit specified in § 642.23(a)(1), except for the catch allowance specified in § 642.23(a)(2);

(4) Possess in or harvest from the FCZ cobia under the minimum size limit specified in § 642.23(b);

(5) Possess in the FCZ king mackerel on board a vessel with gill nets with a minimum mesh size less than that specified in § 642.24(a)(1), except for a catch allowance as specified in § 642.24(a)(2);

(6) Fish for king and Spanish mackerel using a purse seine, except in compliance with § 642.24 (b) and (c);

(7) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(8) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(9) Forcibly to assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (h) of this section;

(10) Resist a lawful arrest for any act prohibited by this part;

(11) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(12) Transfer directly or indirectly, or attempt to transfer, any U.S.-harvested coastal migratory pelagic fish to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested coastal migratory pelagic fish;

(13) Fail to transfer or to display a permit as provided for in § 642.4 (g) and (h);

(14) Falsify or fail to report information required to be submitted by § 642.4 and § 642.5;

(15) Fail to make fish available for inspection as required by § 642.5(e);

(16) Falsify or fail to display the official vessel identification number or comply with other provisions for vessel identification as specified in § 642.6;

(17) Purchase, sell, barter, trade, or accept in trade, king mackerel, harvested in the FCZ from a specific migratory group or specific allocation zone or by purse seine gear, for the remainder of that fishing year specified in § 642.20, after the quota for that migratory group or allocation zone, or purse seine gear as specified in § 642.21 (a) or (b) has been reached and closure as specified in § 642.22 has been invoked (Table 2). (This prohibition does not apply to trade in king mackerel harvested, landed and bartered, traded or sold prior to the closure and held in cold storage by dealers and processors);

(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted under § 642.4 king mackerel from a migratory group or allocation zone after the quota for that migratory group or allocation zone specified in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22 (Table 2);

(19) Fish for king or Spanish mackerel in the FCZ with purse seines after the quotas specified in § 642.21 (b) and (d) have been reached and closure has been invoked as specified in § 642.22 (Table 2);

(20) Fish for or have in possession onboard Spanish mackerel in or from the FCZ or purchase, sell, barter, trade or accept in trade, Spanish mackerel after the total allowable catch specified in § 642.21(c) is reached and closure has been invoked as specified in § 642.22 (Table 2);

(21) Land, consume at sea, sell, or have in possession at sea or time of landing, Gulf migratory group king mackerel harvested from the FCZ in excess of the bag limits specified in § 642.28, except as provided for under § 642.21;

(22) Fish for king mackerel from the Gulf migratory group in the FCZ as defined in § 642.29 under the quotas specified in § 642.21(a) without a permit as specified in § 642.4;

(23) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(24) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken coastal migratory pelagic fish or the final disposition of such coastal migratory pelagic fish through the sale of the coastal migratory pelagic fish;

(25) Land king mackerel from the Gulf migratory group in other than an identifiable form as specified in § 642.28(b); or

(26) Land Spanish mackerel and cobia without the head and fins intact as required by § 642.23(c).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 34845, Aug. 28, 1985]

§ 642.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-)[1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 642.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for the commercial quota including purse seines begins at 0001 hours July 1 and ends at 2400 hours on June 30, local time (see Figure 2). The fishing year for the Atlantic migratory group of king mackerel begins at 0001 hours on April 1 and end at 2400 hours on March 31, local time. The purse seine quotas for king mackerel begin at 0001 hours on July 1 and end at 2400 hours on June 30, local time. The fishing year for all other coastal migratory pelagic fish begins at 0001 hours on January 1 and ends at 2400 hours on December 31, local time (Table 1).

[50 FR 34845, Aug. 28, 1985]

§ 642.21 Quotas.

(a) *Commercial quotas for king mackerel.* The initial commercial allocation for the Gulf migratory group of king mackerel is 4.552 million pounds per fishing year. This allocation is divided into quotas as follows: (1) 2.940 million pounds for the eastern allocation zone; (2) 1.328 million pounds for the western allocation zone; and (3) 0.284 million pounds for purse seines (see Figure 2 and paragraph (e) of this section for description of allocation zones). The commercial allocation for the Atlantic migratory group of king mackerel is 4.382 million pounds per fishing year. A fish is counted against the commercial quota or allocation when it is first sold (Table 2).

(b) *Purse seine quota for king mackerel.* The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 284,000 pounds each fishing year. The total harvest of king mackerel by purse seines from the Atlantic Ocean is limited to 400,000 pounds each fishing year. King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2).

(c) *Spanish mackerel.* The TAC of Spanish mackerel is 27 million pounds per fishing year in aggregate for all user groups (Table 2).

(d) *Purse seine quota for Spanish mackerel.* The harvest of Spanish mackerel by purse seines is limited to 300,000 pounds in the Gulf of Mexico and to 300,000 pounds in the Atlantic Ocean per fishing year. Spanish mackerel harvested by purse seines are included in the TAC specified in paragraph (c) of this section (Table 2).

(e) *Geographic boundaries and allocation zones.* The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83° W. longitude, proceeds north to 24°35′ N.

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

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latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland. The boundary between eastern and western zones established for commercial allocation of the Gulf migratory group of king mackerel is a line beginning at the boundary between the States of Alabama and Florida (30°16′53″ N. latitude and 87°31′06″ W. longitude) and running directly south to its intersection with the outer limit of the FCZ (Figure 2).

[50 FR 34845, Aug. 28, 1985]

§ 642.22 Closures.

The Secretary, by publication of a notice in the FEDERAL REGISTER, will close the king or Spanish mackerel fishery to fishing in the FCZ for a particular gear type, allocation zone, or user group when the quota for that gear type, allocation zone, or user group under § 642.21 has been reached or is projected to be reached (Table 2). The notice of closure for quotas specified under § 642.21 will also provide notice that the purchase, barter, trade, and sale of king or Spanish mackerel taken from the FCZ after the closure for the migratory group or allocation zone affected is prohibited for the remainder of that fishing year. This prohibition does not apply to trade in Spanish or king mackerel harvested, landed, and bartered, traded or sold prior to the closure and held in cold storage by dealers or processors.

[50 FR 34846, Aug. 28, 1985]

§ 642.23 Size restrictions.

(a) *Spanish mackerel*—(1) *Minimum size.* The minimum size for the possession of Spanish mackerel in or taken from the FCZ is 12 inches (fork length) or 14 inches (total length) for both recreational or commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(2) *Catch allowance.* A catch of Spanish mackerel under the 12-inch fork length is allowed equal to five percent of the total catch by weight of Spanish mackerel on board.

(b) *Cobia.* The minimum size limit for the possession of cobia in or taken from the FCZ is 33 inches (fork length) or 37 inches (total length).

(c) All Spanish mackerel and cobia must be landed with the head and fins intact.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 34846, Aug. 28, 1985]

§ 642.24 Vessel, gear, equipment limitations.

(a) *Gill nets*—(1) *Minimum size.* The minimum mesh size for gill nets used to fish for king mackerel is 4¾ inches (stretched mesh).

(2) *Catch allowance.* A catch of king mackerel is allowed equal to ten percent of the total catch by number of Spanish mackerel on board a vessel with gill nets with a minimum mesh size smaller than that specified in paragraph (a)(1) of this section.

(b) *Purse seines.* Owners or operators of purse seine vessels fishing for king or Spanish mackerel shall:

(1) Send a letter of intent to fish for king or Spanish mackerel, indicating the number of vessels and area to be fished, to the Regional Director (i) at least 30 days in advance of the beginning of the fishing year, or (ii) within a shorter time period deemed reasonable by the Regional Director and publicized in the news media;

(2) Notify the Center Director by telephone, 48 hours in advance of each trip, of departure information (port, dock, date, and time) and of the expected landing information (port, dock, and date);

(3) Report to the Center Director, by telephone, the quantity of landings, by species, for each trip as soon as practical after landing and not later than 15 hours after unloading;

(4) Accommodate observers for scientific and statistical purposes; and

(5) Provide for embarkment and disembarkment of observers as determined by the Center Director.

(c) *Purse seine catch allowance and exclusions.* A vessel with a purse seine abroad will not be considered as fishing for king or Spanish mackerel for the purposes of paragraph (b) of this section and will not be considered in violation of a purse seine closure affected in accordance with § 642.22 provided the catch of king mackerel or

Spanish mackerel does not exceed one or ten percent, respectively, by weight or number (whichever is less) of the catch of all fish abroad the vessel. Such king and Spanish mackerel must be reported in accordance with paragraph (b)(3) of this section and will be counted in the quotas provided for under § 642.21 and subject to the prohibition on sale provided for under § 642.22.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 34846, Aug. 28, 1985]

§ 642.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

§ 642.26 Area, time limitations.

(a) *Notices in the Federal Register.* Subject to the procedures and restrictions set forth in paragraphs (b) and (c) of this section, the Secretary may take any of the following actions by notice in the FEDERAL REGISTER under the circumstances specified:

(1) If the Secretary determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the FCZ between 27°0.6'N. latitude and 27°50'N. latitude off the east coast of the State of Florida, the Secretary may:

(i) Prohibit use of gillnet gear to take king mackerel within the areas (depicted in Figure 1 and described in Table 1) encompassed by points 1, 2, 5, and 6; 2, 3, 4, and 5; or 1, 2, 3, 4, 5, and 6;

TABLE 1

Point 1—Bethel Shoal light at 27°44.3'N. latitude, 80°10.4'W. longitude;

Point 2—A wreck 5 miles southeast of Fort Pierce Inlet at 27°23.5'N. latitude, 80°03.7'W. longitude;

Point 3—Marker WR 16, five miles northeast of Jupiter Inlet at 27°0.6'N. latitude, 80°2.6'W. longitude;

Point 4—27°0.6'N. latitude, 79°55.0'W. longitude at approximately the 100 fm. depth due east of Point 3;

Point 5—27°23.5'N. latitude, 79°54.0'W. longitude at approximately the 100 fm. depth due east of Point 2; and

Point 6—27°44.3'N. latitude, 79°53.5'W. longitude at approximately the 100 fm. depth due east of Point 1.

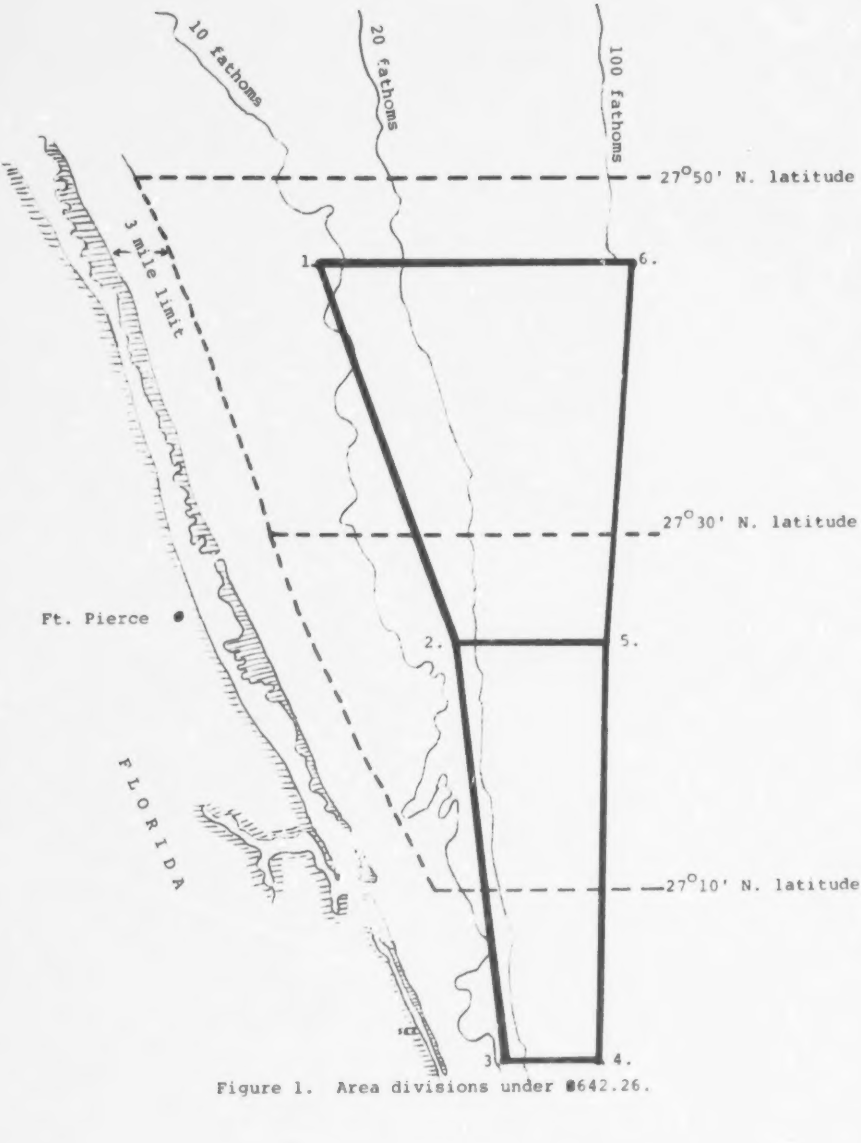
10 fathoms
20 fathoms
100 fathoms
27°50' N. latitude
3 mile limit
1.
6.
27°30' N. latitude
Ft. Pierce
2.
5.
FLORIDA
27°10' N. latitude
3.
4.

Figure 1. Area divisions under §642.26.

(ii) Prohibit use of hook-and-line gear to take king mackerel in the FCZ landward of line between points 1 and 2, 2 and 3, or 1, 2, and 3;

(iii) In the first year a conflict arises, close the FCZ between 27°30′N. latitude and 27°10′N. latitude to the use of gill nets for taking king mackerel, and close the FCZ between 27°30′N. latitude and 27°50′N. latitude to the use of hook-and-line gear for taking king mackerel (in any succeeding year that a conflict develops, the Secretary may change the zone that is closed to each gear); or

(iv) Alternate daily the use of each gear within the area between 27°10′N. latitude and 27°50′N. latitude as follows:

(A) On even days of the month, close the area to the use of gillnet gear to take king mackerel.

(B) On odd days of the month, close the area to the use of hook-and-line gear to take king mackerel.

(2) If a conflict described in paragraph (a)(1) of this section results in death or serious bodily injury or significant gear loss, the Secretary may close the fishery for king mackerel to all users in the FCZ between 27°10′N. latitude and 27°50′N. latitude.

(b) *Procedures.* The Secretary shall use the following procedures in determining whether a conflict exists for which a notice in the Federal Register is appropriate:

(1) When the Secretary is advised by any person that a conflict exists, he will confirm the existence of such a conflict through information supplied him by NMFS, the U.S. Coast Guard, other appropriate law enforcement agencies, or personnel of the State of Florida agency with marine fishery management responsibility.

(2) The Secretary shall also confer with the Chairmen of the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils), the State of Florida agency with marine fishery management responsibility, and such other persons as the Secretary deems appropriate.

(c) *Restrictions on notices in the Federal Register.* (1) No notice in the Federal Register may be implemented which results in exclusive access of any user group or gear type to the fishery during the time the notice in the Federal Register is in effect.

(2) No notice in the Federal Register may be effective for more than five days, except under the conditions set forth in paragraph (c)(4) of this section.

(3) When the Secretary submits to the Federal Register a notice for implementation under this section, he will immediately arrange for a fact-finding meeting in the area of the conflict, to be convened no later than 72 hours from the time of implementation of the notice in the Federal Register.

(i) The following persons will be advised of such a meeting:

(A) The Chairmen of the Councils;

(B) The State of Florida agency with fishery management responsibility;

(C) Local media;

(D) Such user-group representatives or organizations as may be appropriate and practicable; and

(E) Other persons as deemed appropriate by the Secretary or as requested by the Chairmen of the Councils or the State of Florida agency.

(ii) The fact-finding meeting will be held for the purpose of evaluating the following:

(A) The existence of a conflict needing resolution by notice in the Federal Register;

(B) The appropriate term of the notice in the Federal Register, i.e., either greater or less than five days;

(C) Other possible solutions to the conflict besides Federal intervention; and

(D) Other relevant matters.

(4) If the Secretary determines, as a result of the fact-finding meeting, that the term of the notice in the Federal Register should exceed five days, he may, after consultation with the Chairman of the Councils and the State of Florida agency, extend such notice in the Federal Register for a period not to exceed 30 days from the date of initial implementation. If the Secretary determines that it is necessary or appropriate for the term of such notice in the Federal Register to extend beyond 30 days, he may extend it a second time, after consulting with the Chairman of the Council, for such

period of time as necessary to resolve the conflict.

(5) The Secretary may rescind a notice in the FEDERAL REGISTER if he finds, through application of the same procedures set forth in paragraph (b) of this section, that the conflict no longer exists.

[48 FR 5272, Feb. 4, 1983, as amended at 50 FR 38538, Sept. 23, 1985]

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of king and Spanish mackerel in the management unit on an annual basis. The Group will present a report of its assessment and recommendations to the Councils.

(b) The Councils will consider the report and recommendations of the Group and hold public hearings at a time and place of the Councils' choosing to discuss the Group's report. The Councils will convene an Advisory Panel and may convene the Scientific and Statistical Committee to provide advice prior to taking final action. After receiving public input, Councils will make findings on the need for changes.

(c) If changes are needed in MSYs, TACs, bag limits, quotas, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the Group's report, relevant background material, and public comment. This report will be submitted each year by such date as agreed upon by the Councils.

(d) The Regional Director will review the Councils' recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Councils for the rejection and existing regulations will remain in effect until the issue is resolved.

(e) If the Regional Director concurs that the Councils' recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish notice in the FEDERAL REGISTER of any preliminary changes prior to the appropriate fishing year. A 15-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish notice in the FEDERAL REGISTER of any final changes for that fishing year.

(f) Appropriate adjustments which may be implemented by the Secretary by notice in the FEDERAL REGISTER are:

(1) Adjustment of the point estimates of MSY for mackerel within the following ranges:

(i) King mackerel—21.9 million pounds to 35.2 million pounds.

(ii) Spanish mackerel—13.5 million pounds to 49.1 million pounds.

(2) Setting TACs for each stock or group of fish which should be managed separately, as identified in the FMP. The TAC may be increased, not to exceed 30 percent annually when warranted by new information. Any number of increases may be made so long as they do not exceed 30 percent in any one year and provided that no TAC will exceed the best point estimate of MSY by more than ten percent. Downward adjustments of any percentage are allowed in order to protect the stock and prevent overfishing. Reductions or increases in allocations as a result of changes in the TAC are to be as equitable as may be practicable utilizing similar percentage changes to all participants in a fishery. (Changes in bag limit cannot always accommodate the exact desired level of change.)

(3) Implementing or modifying quotas, bag limits, or permits as necessary to limit the catch of each user group to its allocation.

[50 FR 34846, Aug. 28, 1985]

§ 642.28 Bag and possession limits.

(a) *Recreational allocation bag limit.* Persons who fish for king mackerel from the Gulf migratory group (see Figure 2) in the FCZ (except those fishing under the permit and quotas specified in § 642.4, § 642.21 and § 642.24(c)) are limited to the following:

(1) Possessing three (3) king mackerel per person per trip, excluding the vessel captain and crew or possessing two (2) king mackerel per person per

trip, including the vessel captain and crew, whichever is the greater, when fishing from a charter vessel.

(2) Possessing two (2) king mackerel per person per trip when fishing from other vessels;

(b) All king mackerel from the Gulf migratory group must be landed in an identifiable form as to number and species (with the understanding that head and tail can be removed).

(c) After a closure under § 642.22 is invoked for a migratory group or allocation zone specified in § 642.21 vessels permitted under § 642.4 may not fish for Gulf migratory king mackerel under the bag limit specified under paragraph (a) of this section nor can persons fishing under the bag limit sell their fish.

[50 FR 34847, Aug. 28, 1985]

§ 642.29 Area and time separation.

(a) *Summer separation.* During the summer period (April 1 through October 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25° 48′ N. latitude) to the outer limit of the FCZ (Figure 2).

(b) *Winter separation.* During the winter period (November 1 through March 31) the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29° 25′ N. latitude) to the outer limit of the FCZ (Figure 2).

TABLE 1—FISHING SEASONS FOR COASTAL MIGRATORY PELAGIC FISH IN THE FCZ

Type	Begins—	Ends—
King mackerel:		
Gulf migratory group	0001 hours July 1	2400 hours June 30
Atlantic migratory group	0001 hours Apr. 1	2400 hours Mar. 31
Purse seine quotas	0001 hours July 1	2400 hours June 30
Other fish and fishing:		
All other fishing	0001 hours Jan. 1	2400 hours Dec. 31

TABLE 2—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES [1]

Migratory group(s)	Fishing year	Gear	Allocation zone	Initial year quota/TAC (million pounds)	Prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic	1 Apr.-31 Mar	All types	Entire range [2]	4.382	Sales from migratory group are projected to reach quota
Gulf	1 July-30 June	All types	Entire range [2]	4.552	Sales from migratory group are projected to reach quota
Gulf	1 July-30 June	All types	Western zone [3]	1.328	Sales from allocation zone are projected to reach quota
Gulf	1 July-30 June	All types	Eastern zone [3]	2.940	Sales from allocation zone are projected to reach quota
Gulf	1 July-30 June	P.S.[5]	Entire range [2]	0.284	Landings from migratory group are projected to reach quota
G.A.[6]	1 July-30 June	P.S.[5]	Atlantic Ocean [4]	0.400	Landings from migratory group are projected to reach quota
Spanish mackerel:	1 Jan.-31 Dec	All types	G.A.[6]	27.000	When landings are projected to reach TAC
	1 Jan.-31 Dec	P.S.[5]	Atlantic Ocean	0.300	When landings are projected to reach quota
	1 Jan.-31 Dec	P.S.[5]	Gulf of Mexico	0.300	When landings are projected to reach quota

[1] See Figure 2 for delineation of migratory group ranges and allocation zones.

[2] The range of migratory groups varies by season (§ 642.29)—See Figure 2.

[3] See Figure 2 and § 642.21(e).

[4] See § 642.21(e).

[5] Purse Seines.

[6] Gulf & Atlantic.

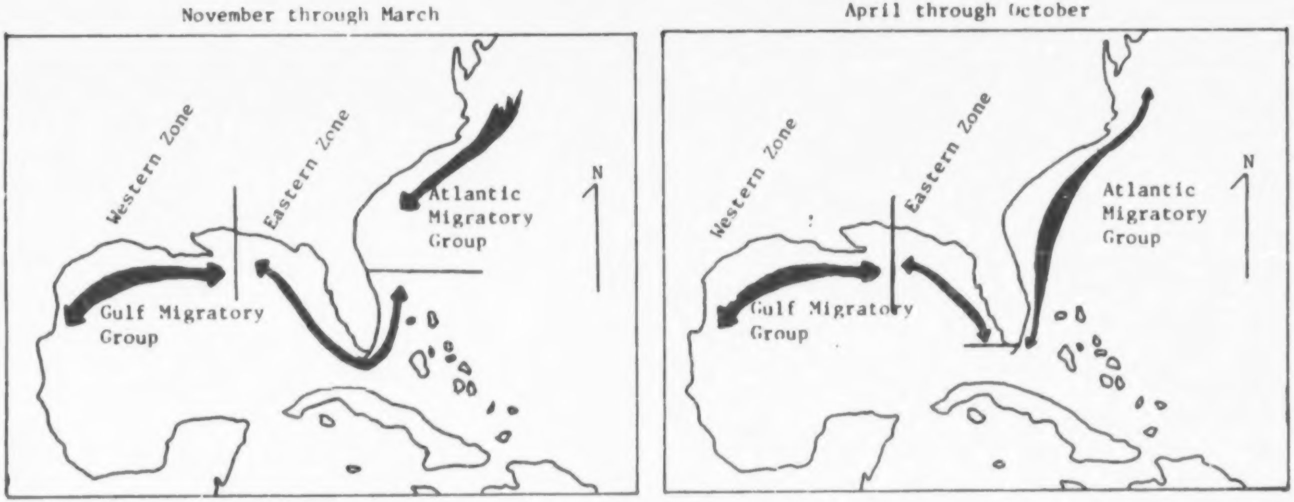
November through March
April through October
Western Zone
Eastern Zone
Atlantic Migratory Group
Gulf Migratory Group
N
Western Zone
Eastern Zone
Atlantic Migratory Group
Gulf Migratory Group
N

Figure 2. Range of Gulf and Atlantic migratory groups of king mackerel during winter and summer periods and commercial allocation zones for Gulf group king mackerel.

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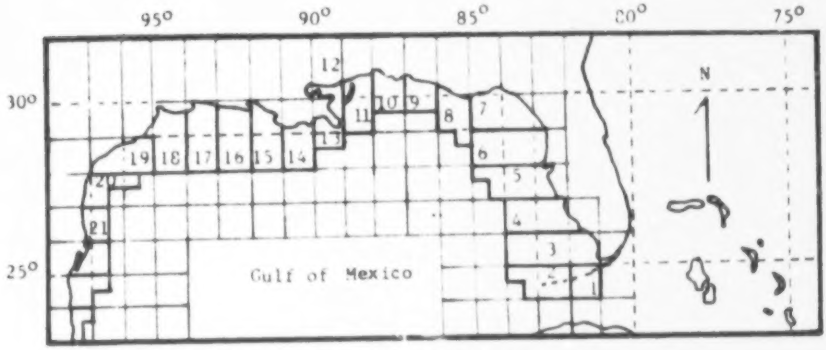
Figure 3. Statistical Grids for Reporting the Harvest of Coastal Migratory Pelagic Fish.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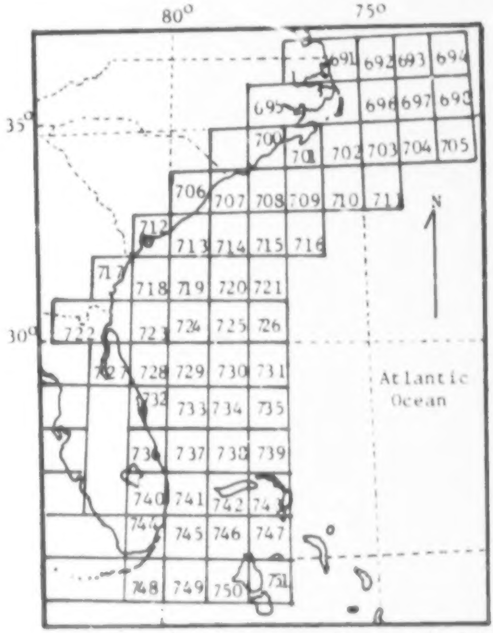
Gulf of Mexico

Statistical Grids in the Gulf of Mexico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Atlantic Ocean

Statistical Grids in the South Atlantic

[50 FR 34847, Aug. 28, 1985]

PART 645—SPINY LOBSTER FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

645.1 Purpose and scope.
645.2 Definitions.
645.3 Relation to other laws.
645.4 Permits.
645.5 Recordkeeping and reporting requirements. [Reserved]
645.6 Vessel and gear identification.
645.7 Prohibitions.
645.8 Facilitation of enforcement.
645.9 Penalties.

Subpart B—Management Measures

645.20 Harvest limitations.
645.21 Size limitations.
645.22 Gear limitations
645.23 Specifically authorized activities.

AUTHORITY: 16 U.S.C 1801 *et seq.*

SOURCE: 49 FR 50050, Dec. 26, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 645.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part regulates domestic fishing for spiny lobster within that portion of the fishery conservation zone (FCZ) surrounding Puerto Rico and the U.S. Virgin Islands. For Puerto Rico the inner boundary of the FCZ is nine nautical miles from the baseline used to measure the territorial sea; for the U.S. Virgin Islands it is three nautical miles.

§ 645.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Berried lobster means an egg-bearing lobster.

Carapace length (CL) means a head-length measurement taken from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax (figure 1).

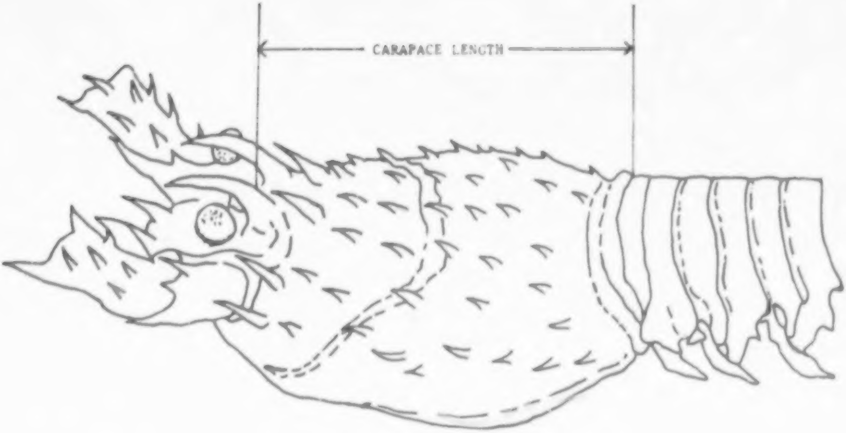

Figure 1 Method of Measuring Carapace Length

Fish means the spiny lobster, *Panulirus argus.*

Fishery conservation zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing gear means snares, nets, pots, traps, and use of hands.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Management area means that portion of the FCZ adjacent to the waters under the jurisdiction of the U.S. Virgin Islands and Puerto Rico.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Official number means the documentation number issued by the U.S. Coast Guard, or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part:

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141, or a designee.

Secretary means the Secretary of Commerce or a designee.

Spiny lobster means *Panulirus argus*.

State includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

§ 645.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 645.4 Permits.

(a) *General*. A vessel in the spiny lobster fishery must possess a valid fishing permit and color code issued by the Regional Director, unless the vessel possesses a valid fishing permit and color code issued by the Government of Puerto Rico or the Government of the Virgin Islands.

(b) *Application to the Regional Director*. (1) An application for a Federal permit and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt of the permit and color code.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number; and

(iv) The vessel's radio call sign.

(c) *Fees*. No fee is required for a permit or color code issued by the Regional Director under this part.

EDITORIAL NOTE: Section 645.4 contains collection of information requirements. A request to collect this information has been submitted to the Office of Management and Budget for approval.

§ 645.5 Recordkeeping and reporting requirements. [Reserved]

§ 645.6 Vessel and gear identification.

(a) *Vessel identification*. Each fishing vessel subject to this part must display its official number and color code issued with the vessel's permit on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its official number and color code on an appropriate weather deck. All official numbers and color codes must be displayed permanently and conspicuously so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, at least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or smaller. The color code representation must be in the form of a circle of a diameter not less than the height of the numerals or, in the case of a 3-inch high numerals, in the form of a strip not less than 3 inches high and 18 inches long.

(b) *Duties of operator.* The operator of each fishing vessel subject to this part must (1) Keep the markings displaying the official number and color code clearly legible and in good repair; and (2) Insure that no part of the vessel, its rigging or its fishing gear obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) All traps, pots, and buoys used in the spiny lobster fishery must be marked and identified as follows:

(i) Buoys affixed to traps and pots must bear the number and color code specified with the vessel's permit. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps and pots must bear the number specified with the vessel's permit. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap or pot.

(2) Spiny lobster traps, pots, and buoys fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to spiny lobster traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director, the Government of Puerto Rico, or the Government of the U.S. Virgin Islands, whichever entity issued the vessel's permit.

(3) Unmarked spiny lobster traps deployed in the FCZ are illegal and may be disposed of in any appropriate manner by the Secretary or the Secretary's designee (including an authorized officer). Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

EDITORIAL NOTE: Section 645.6 contains collection of information requirements. A request to collect this information has been submitted to the Office of Management and Budget for approval.

§ 645.7 Prohibitions.

It is unlawful for any person to—

(a) Falsify or fail to affix and maintain gear and vessel markings as required by § 645.6;

(b) Fail to comply immediately with enforcement and boarding procedures specified in § 645.8;

(c) Retain on board or possess on land any berried spiny lobster, as specified in § 645.20(a)(1);

(d) Strip eggs from or otherwise molest any berried spiny lobster as specified in § 645.20(a)(2);

(e) Willfully tend, pull, open, or otherwise molest another person's traps except as provided in § 645.20(b);

(f) Possess in the FCZ any spiny lobster with a carapace length less than the minimum size limit specified in § 645.21(a) except as allowed in § 645.21(b);

(g) Possess spiny lobster tails separated from the carapace before they have been landed, as specified in § 645.21(c);

(h) Use traps without degradable panels, or use prohibited gear or methods, as specified in § 645.22;

(i) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any spiny lobsters taken or retained in violation of the Magnuson Act, this part, any permit issued under this part, or any other regulation or permit issued under the Magnuson Act;

BEST C ABLE

(j) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(k) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (j) of this section;

(l) Resist a lawful arrest for any act prohibited by this part;

(m) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(n) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested spiny lobsters to any foreign fishing vessel, while such vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested spiny lobsters; or

(o) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 645.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM of high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as a signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necesssity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.—.—)[1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radio-telephone or by illuminating the vessel's identification.

(2) "RY-CY" (.—.—.———.—.—.——) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... ——.— ...——) means "you should stop or heave to; I am going to board you."

(4) "L" (.—..) means "you should stop your vessel instantly."

[49 FR 50050, Dec. 26, 1984; 50 FR 1229, Jan. 10, 1985]

§ 645.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and 15 CFR Part 904 (Civil Procedures) and other applicable law.

Subpart B—Management Measures

§ 645.20 Harvest limitations.

(a) *Berried lobsters.* (1) Berried spiny lobsters must be returned to the water unharmed. Berried lobsters may be retained in traps or pots as attractants until the eggs are shed provided the traps are returned to the water and not retained on the vessel or landed.

(2) Berried spiny lobsters may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(b) *Pulling traps.* Traps may be pulled, tended, or opened only aboard the owner's vessel, unless the boat tending another person's traps has on board written consent of the trap owner or the owner is on board with his or her permit. This restriction is not applicable to authorized officers.

§ 645.21 Size limitations.

(a) Spiny lobsters with a carapace length of less than 3.5 inches (89 millimeters) must be returned immediately to the water unharmed.

(b) Spiny lobsters with a carapace length less than the 3.5-inch minimum sized limit may be used as "attractants" in traps or pots, but may not be retained on the vessel or landed.

(c) Spiny lobsters must remain whole prior to landing at shoreside. Tails may not be separated from the carapace before the spiny lobsters have been landed.

§ 645.22 Gear limitations.

(a) *Degradable panel.* All traps or pots used for fishing in the FCZ must contain on any vertical side or on the top an opening no smaller in diameter than the throat or entrance of the trap or pot. The opening may be covered either by degradable netting made of any of the materials listed below, or by a cover made of any material and fastened to the fish trap or pot with any of the materials listed below:

(1) Untreated fiber of biological origin not more than three millimeters (approximately ⅛") maximum diameter; this includes, but is not limited to tyre palm, hemp, jute, cotton, wool or silk.

(2) Non-galvanized black iron wire not more than 1/16 inch (approximately 1.59 millimeters in diameter), that is, 16 gauge wire.

(b) *Prohibited gear or methods.* Spiny lobsters may not be taken with:

(1) Explosives, poisons, drugs or other chemicals; or

(2) Spears, hooks, or similar devices. The possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence of violation of this section.

§ 645.23 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and

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[1] (.) means a short flash of light.

[2] (—) means a long flash of light.

data, activities that are otherwise prohibited by these regulations.

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

646.1 Purpose and scope.
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Subpart B—Management Measures

646.20 Harvest limitations.
646.21 Size limitations.
646.22 Gear limitations.
646.23 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 39466, Aug. 31, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 646.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part regulates fishing for fish in the snapper-grouper fishery by fishing vessels within the South Atlantic portion of the fishery conservation zone (FCZ).

§ 646.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part shall have the following meaning:

Authorized officers means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer of special agent of the National Marine Fisheries Service (NMFS);

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized statistical reporting agent means:

(a) Any person so designated by the Center Director; or

(b) Any person so designated by the head of any Federal or State agency which has entered into an agreement with the Secretary to collect fishery data.

Black sea bass trap means a fish trap that harvests or contains at any time no more than 25 percent by number of fishes in the management unit other than black sea bass.

Center Director means the Center Director or a designee, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, Florida 33149; telephone 305-361-5761.

Commercial fisherman means a person who sells, trades, or barters any part of his or her catch of fish.

Dealer means the person who first receives by way of purchase, barter, or trade fish from a commercial fisherman.

Fish in the snapper-grouper species means the following species:

Snappers Lutjanidae

Black snapper—*Apsilus dentatus*
Queen snapper—*Etelis oculatus*
Mutton snapper—*Lutjanus analis*
Schoolmaster—*Lutjanus apodus*
Blackfin snapper—*Lutjanus buccanella*
Red snapper—*Lutjanus campechanus*
Cubera snapper—*Lutjanus cyanopterus*
Gray snapper—*Lutjanus griseus*
Mahogan snapper—*Lutjanus mahogoni*
Dog snapper—*Lutjanus jocu*
Lane snapper—*Lutjanus synagris*
Silk snapper—*Lutjanus vivanus*
Yellowtail snapper—*Ocyurus chrysurus*
Vermilion snapper—*Rhomboplites aurorubens*

Sea Basses—Serranidae

Bank sea bass—*Centropristis ocyurus*
Rock sea bass—*Centropristis philadelphica*
Black sea bass—*Centropristis striata*

Groupers—Serranidae

Rock hind—*Epinephelus adscensionis*
Graysby—*Epinephelus cruentatus*
Speckled hind—*Epinephelus drummondhayi*

Yellowedge grouper—*Epinephelus flavolimbatus*
Coney—*Epinephelus fulvus*
Red hind—*Epinephelus guttatus*
Jewfish—*Epinephelus itajara*
Red grouper—*Epinephelus morio*
Misty grouper—*Epinephelus mystacinus*
Warsaw grouper—*Epinephelus nigritus*
Snowy grouper—*Epinephelus niveatus*
Nassau grouper—*Epinephelus striatus*
Black grouper—*Mycteroperca bonaci*
Yellowmouth grouper—*Mycteroperca interstitialis*
Gag—*Mycteroperca microlepis*
Scamp—*Mycteroperca phenax*
Tiger grouper—*Mycteroperca tigris*
Yellowfin grouper—*Mycteroperca venenosa*

Porgies—Sparidae

Sheepshead—*Archosargus probatocephalus*
Grass porgy—*Calamus arctifrons*
Jolthead porgy—*Calamus bajonado*
Saucereye porgy—*Calamus calamus*
Whitebone porgy—*Calamus leucosteus*
Knobbed porgy—*Calamus nodosus*
Red porgy—*Pagrus pagrus*
Longspine porgy—*Stenotomus caprinus*
Scup—*Stenotomus chrysops*

Grunts—Haemulidae

Black margate—*Anisotremus surinamensis*
Porkfish—*Anisotremus virginicus*
Margate—*Haemulon album*
Tomtate—*Haemulon aurolineatum*
Smallmouth grunt—*Haemulon chrysargyreum*
French grunt—*Haemulon flavolineatum*
Spanish grunt—*Haemulon macrostomum*
Cottonwick—*Haemulon melanurum*
Sailors choice—*Haemulon parrai*
White grunt—*Haemulon plumieri*
Blue stripe grunt—*Haemulon sciurus*

Tilefishes—Malacanthidae

Blueline tilefish—*Caulolatilus microps*
Tilefish (Golden)—*Lopholatilus chamaeleonticeps*
Sand tilefish—*Malacanthus plumieri*

Triggerfishes—Balistidae

Gray triggerfish—*Balistes capriscus*
Queen triggerfish—*Balistes vetula*
Ocean triggerfish—*Canthidermis sufflamen*

Wrasses—Labridae

Hogfish—*Lachnolaimus maximus*
Puddingwife—*Halichoeres radiatus*

Jacks—Carangidae

Yellow jack—*Caranx bartholomaei*
Blue runner—*Caranx crysos*
Crevalle jack—*Caranx hippos*
Bar Jack—*Caranx ruber*
Greater amber jack—*Seriola dumerili*
Aimaco jack—*Seriola rivoliana*

Fish trap means any trap and the component parts thereof used for or capable of taking finfish, regardless of the construction material, except those traps historically used in the directed fisheries for crustaceans (blue crab, stone crab, and spiny lobster). Fish trap further means those traps used to fish for black sea bass.

Fishery conservation zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or by the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

Regional Director means the Regional Director, or a designee, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Secretary means the Secretary of Commerce, or a designee.

South Atlantic means that portion of the FCZ along the Atlantic coastal states south of the Viriginia/North Carolina border to the boundary between the Gulf of Mexico and the Atlantic Ocean. The boundary between the Gulf of Mexico and the Atlantic Ocean begins at the intersection of the outer boundary of the FCZ and 83°00′ W. longitude, proceeds north to 24°35′ N. latitude (Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

Total length means distance from the tip of the head (snout) to the furthermost tip of the tail (caudal fin).

U.S. fish processors means facilities located within the United States for, and vessels of the United States, used for or equipped for, the processing of fish for commercial use or consumption.

U.S-harvested fish means fish caught, taken, or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

[48 FR 39466, Aug. 31, 1983, as amended at 50 FR 38819, Sept. 25, 1985]

EFFECTIVE DATE NOTE: At 50 FR 38819, Sept. 25, 1985, the definitions of "*Black sea bass trap*" and "*official number*" were added to § 646.2, effective October 25, 1985.

§ 646.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations are intended to apply within the FCZ portion of the following National Marine Sanctuaries and National Park unless regulations establishing such Sanctuaries or Park prohibit their application.

(1) Looe Key National Marine Sanctuary (15 CFR Part 937);

(2) Key Largo Coral Reef Marine Sanctuary (15 CFR Part 929);

(3) Biscayne National Park (Title 16 U.S.C. 410gg);

(4) Gray's Reef National Marine Sanctuary (15 CFR Part 938); and

(5) Monitor Marine Sanctuary (15 CFR Part 924).

§ 646.4 Catch monitoring.

Data will be collected by authorized statistical reporting agents from a sample of commercial and recreational catch for YPR analysis. Those fishermen and dealers selected by the Center Director must make their fish available for inspection by those agents.

§ 646.5 Vessel and gear identification.

(a) *Applicability.* Fishing vessels from which fish traps, other than black sea bass traps, are deployed in the FCZ are required to obtain a vessel and gear identification number and color code from the Regional Director.

(b) *Application.* (1) An application for a vessel and gear identification number and color code under this part must be signed by the owner or operator of the vessel and submitted on an appropriate form obtained from the Regional Director. Fishermen who have an existing number and color code from another fishery may indicate on the application their preference to use that same identification system for the fish trap fishery. Whenever possible, the Regional Director will reissue the requested number and color code adding only a single letter prefix to indicate that the vessel and gear are engaged in the fish trap fishery. The application must be submitted to the Regional Director 30 days prior to the date on which the applicant desires receipt of the vessel and gear identification number and color code.

(2) Applicants must provide all of the following information:

(i) Name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port on principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower and year the vessel was built;

vi) Number, dimensions, and estimated cubic volume of the fish traps that will be fished;

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(viii) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in this paragraph must be submitted in writing to the Regional Director by the applicant within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* The Regional Director will issue a color code, vessel and gear identification number, and fish trap tags imprinted with the vessel and gear identification number to the applicant not later than 30 days from the date of receipt of a completed application.

(d) *Display.* Vessels from which fish traps, other than black sea bass traps, are fished; fish traps; and buoys must display the identification number and color code designated by the Regional Director.

(1) *Vessels.* Vessels must permanently and conspicuously display the identification number and color code designated by the Regional Director under paragraph (c) of this section in a manner so as to be readily identifiable from the air and water.

(i) To be visible from the air, the identification number and color code must be permanently affixed to the uppermost structural portion of the vessel or other similar area. The color code must be in the form of a circle at least 20 inches in diameter, and the areas surrounding the circle must be of a contrasting color. The identification number must be at least 10 inches in height and must be affixed adjacent to the 20-inch diameter circle.

(ii) To be visible from the water, the identification number and color code must be permanently affixed to both starboard and port sides of the vessel near amidships. The color code must be in the form of a circle at least 8 inches in diameter and the area surrounding the circle must be of a contrasting color. The identification number must be at least 4 inches in height and must be affixed adjacent to the 8-inch diameter circle.

(2) *Fish traps.* Each fish trap must have affixed to it permanently the numbered identification tag supplied by the Regional Director.

(3) *Buoys.* The use of buoys to identify fish traps is not required. If buoys are used, they must display the identification number and color code so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches in height and affixed to each buoy.

(e) Fish traps fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(f) Unmarked fish traps deployed in the FCZ, other than black sea bass traps, are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked trap can be ascertained, those owners remain subject to appropriate civil penalties.

(Approved by the Office of Management and Budget under control number 0048-0097)

[50 FR 38819, Sept. 25, 1985]

Effective Date Note: At 50 FR 38819, Sept. 25, 1985, § 646.5 was added, effective October 25, 1985.

§ 646.6 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Refuse to make fish available for inspection when requested to do so by an authorized statistical reporting agent, as specified in § 646.4;

(2) Pull or tend fish traps except during the hours specified in § 646.20

(3) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another persons's fish traps except as provided in §646.20(b);

(4) Possess in or harvest from the FCZ red snapper, yellowtail snapper, red grouper, or Nassau grouper under the minimum size specified in § 646.21(a);

(5) Possess in or harvest from that portion of the FCZ south of 35 15' N. latitude (Cape Hatteras, North Carolina) black sea bass under the minimum size specified in § 646.21(b);

(6) Possess in the FCZ any fish in the snapper-grouper fishery without the heads and fins intact as specified in § 646.21(c);

(7) Land any fish in the snapper-grouper fishery, taken from the FCZ, without the heads and fins intact as specified in § 646.21(c);

(8) Fish for fish in the snapper-grouper fishery with explosives or poisons except as provided in § 646.22(a)(1) and (2);

(9) Fish for fish in the snapper-grouper fishery in the FCZ with trawl nets and fish traps except as specified in §§ 646.20 (a) and (b) or 646.22(b);

(10) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, export any fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulations or any permit issued to a foreign vessel under the Magnuson Act;

(11) Fail to comply immediately with enforcement and boarding procedures specified in § 646.7;

(12) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(13) Forcibly to assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (k) of this section;

(14) Resist a lawful arrest for any act prohibited by this part;

(15) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(16) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is in the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorized the receipt by such vessel of the U.S.-harvested fish of the species concerned; or

(17) Fish with fish traps, except black sea bass traps, without an assigned vessel and gear identification number; possess aboard a fishing vessel unmarked fish traps; use, or possess aboard a fishing vessel, buoys not marked with the assigned gear identification number and color code; falsify or fail to affix and maintain vessel or gear markings as required by § 646.5; or

(18) Possess fish traps shoreward of the outer boundary of the FCZ and south of 25°35.5' N. latitude (Fowey Rocks Light, Florida) except as specified in § 646.22(b)(5).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

[48 FR 39466, Aug. 31, 1983, as amended at 48 FR 45404, Oct. 5, 1983; 50 FR 38819, Sept. 25, 1985]

EFFECTIVE DATE NOTE: At 50 FR 38819, Sept. 25, 1985, § 646.6 was amended, effective October 25, 1985, by redesignating the existing introductory text and paragraphs (a) through (q) as new paragraph (a) consisting of introductory text and paragraphs (a)(1) through (17), revising the new introductory text of (a) and the newly redesignated paragraph (a)(17) and adding paragraph (a)(18), and paragraph (b). For the convenience of the user, the superseded text is set forth below.

§ 646.6 Prohibitions.

It is unlawful for any person to:

* * * * *

(q) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

* * * * *

§ 646.7 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to

ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "**AA**" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "**RY-CY**" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "**SQ3**" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "**L**" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 646.8 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 646.20 Harvest limitations.

(a) Fish traps may be pulled or tended only during the period beginning one hour before official sunrise to one hour after official sunset in the South Atlantic portion of the FCZ south of 28°24.5′ N. Latitude (Cape Canaveral, Florida).

(b) Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner.

§ 646.21 Size limitations.

(a) The minimum size limit for the harvest or possession in the FCZ of red snapper, yellowtail snapper, red grouper, and Nassau grouper is 12 inches total length.

(b) The minimum size for the harvest or possession in the FCZ of black sea bass south of Cape Hatteras, North Carolina is 8 inches total length.

(c) All fish in the snapper-grouper fishery subject to minimum size limits specified in this section may be possessed in the FCZ or landed, if harvested from the FCZ, only with the head and fins intact.

§ 646.22 Gear limitations.

(a)(1) Explosives (except explosives in powerheads) may not be used to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b)(1) Fish traps are required to have on at least one side, excluding top and bottom, panels or door-hinging devices or door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of $^3/_{16}$-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(iv) The diameter of the panel opening must be equal to or larger than the interior axis of the trap's throat (funnel).

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

(2) Effective September 28, 1984, fish traps must meet all of the following mesh size requirements:

(i) Two square inch minimum open mesh area;

(ii) One-inch minimum length for shortest side;

(iii) Minimum distance of 1-inch between parallel sides of rectangular openings, and one and one-half (1.5) inches between parallel sides of mesh opening with more than four sides; and

(iv) One and nine tenths (1.9) inches minimum distance for diagonal measurement.

Examples of fish trap mesh configurations which meet the minimum requirements are shown in Figure 1.

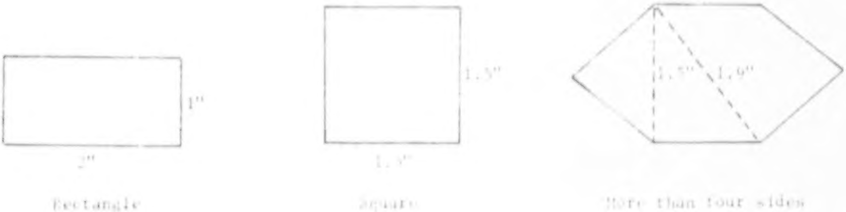

Figure 1. Examples of fish trap configurations which meet the minimum mesh sizes (not to scale).

(3) Effective September 28, 1984, trawl nets targeting fish in the snapper-grouper fishery (25 percent or more of the fish on board by weight are fish in the snapper-grouper fishery) must have a minimum stretched mesh size of 4 inches. Shrimp trawls, calico scallop trawls, and rock shrimp trawls are specifically exempt from this requirement.

(4) Fish traps may not be placed shoreward of the 100-foot contour in that portion of the South Atlantic FCZ south of 25°35.5′ N. latitude (Fowey Rocks Light, Florida). Fish traps so deployed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

(5) Buoy lines attached to fish possessed or fished shoreward to the outer boundary of the FCZ and south of 25°35.5′ N. latitude must be a minimum of 125 feet in length.

[48 FR 39466, Aug. 31, 1983, as amended at 49 FR 33449, Aug. 23, 1984; 50 FR 38820, Sept. 25, 1985]

EFFECTIVE DATE NOTE: At 50 FR 38820, Sept. 25, 1985, § 646.22 was amended, effective October 25, 1985, by revising paragraph (b)(1) and adding paragraph (b)(5). For the convenience of the user, the superseded text is set forth below.

§ 646.22 Gear limitations.

* * * * *

(b)(1) Fish traps must have a degradable panel or a door attached with degradable fasteners or material such as jute or sisal twines which normally deteriorate within 42 days. The opening must be at least as large as the entry ports.

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§ 646.23 Specifically authorized activities.

The Secretary may authorize for, the acquisition of information and data, activities which are otherwise prohibited by these regulations.

PART 649—AMERICAN LOBSTER FISHERY

Subpart A—General Provisions

Sec.

649.1 Purpose and scope.
649.2 Definitions.
649.3 Relation to other laws.
649.4 Vessel permits.
649.5 Recordkeeping requirements. [Reserved]
649.6 Vessel identification.
649.7 Prohibitions.
649.8 Enforcement.
649.9 Penalties.

Subpart B—Management Measures

649.20 Harvesting and landing requirements.
649.21 Gear marking and escape vent requirements.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 36268, Aug. 10, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 649.1 Purpose and scope.

This part implements the American Lobster Fishery Management Plan prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council, and approved by the Director of the Northeast Region of the National Marine Fisheries Service, NOAA. These regulations govern fishing for American lobster within that portion of the Atlantic Ocean over which the United States exercises fishery management authority, and possession of American lobster and lobster traps.

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

American lobster or *lobster* means the species *Homarus americanus*.

Area of custody means any vessel, building, vehicle, pier, live car, pound, or dock facility where American lobster may be found.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State Agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Berried female means a female lobster bearing eggs attached to the abdominal appendages.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the lobster.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish or shellfish on board a vessel.

Council includes the New England and Mid-Atlantic Fishery Management Councils.

Fish includes the American lobster, *Homarus americanus*.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishery management plan (FMP) means the American Lobster Fishery Management Plan and any amendments thereto.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to arrive in port.

Magnuson Act means the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

NOAA means the National Oceanic and Atmospheric Administration.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971 (46 U.S.C. 1451 *et seq.*) or the Vessel Documentation Act (46 U.S.C. 65).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Scrubbing is the forcible removal of eggs from a berried female lobster.

Secretary means the Secretary of Commerce, or a designee.

Sixth tail segment is that tail segment closest to the fan of the lobster's tail with the segment length measured along the dorsal center line with the tail flexed.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 *et seq.*) and measuring less than five net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 *et seq.*) and used exclusively for pleasure.

V-notch conservation area means the area of the FCZ north and east of a line which begins at a point 43°06′ N. latitude, 70°34′ W. longitude, runs due southeast to a point 42° N. latitude, 69°35′ W. longitude, and thence runs due east along the 42nd parallel to the seaward limit of the FCZ.

§ 649.3 Relation to other laws.

All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924, in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina. Nothing in these regulations will supersede more restrictive State or local lobster management measures.

§ 649.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for American lobster in the FCZ must have a permit required by this part on board the vessel. The Regional Director may by agreement with State agencies recognize permits or licenses issued by those agencies endorsed for fishing for

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lobster in the FCZ, providing that such permitting programs accurately identify persons who fish in the FCZ, and that the Regional Director can either individually or in concert with the State agency act to suspend the permit or license for FCZ fishing for any violation under this part.

(2) Alternate State FCZ permitting programs will be established through a letter of agreement between the Regional Director and the director of the State marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate FCZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the State director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the FCZ should determine whether an alternate FCZ permitting program is in force for their State before applying for a Federal permit under § 649.4(b).

(3) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for FCZ fishing under § 649.4(a)(2) must agree, as a condition of the permit, that all the vessels' lobster fishing, catch, and gear (without regard to whether such fishing occurs in the FCZ or landward of the FCZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by State or local law differ, any vessel owner or operator permitted to fish in the FCZ must comply with the more restrictive requirement.

(b) *Application.* An application for a federally issued fishing vessel permit under this section must be submitted and signed by the vessel owner or operator on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director and must contain the following information:

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, length, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel;

(7) The type, and quantity of fishing gear used by the vessel;

(8) The size of the crew, which may be stated in terms of a range; and

(9) A signed statement that the applicant agrees to the conditions specified in § 649.4(a)(3), i.e. that all the vessel's fishing, catch, and gear, of American lobster will be subject to the requirements of this part, in addition to any more restrictive conservation requirements of applicable State or local rules, without regard to where such fishing, catch, or gear occur, is taken, or is possessed.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application will be considered abandoned.

(d) *Expiration.* A federally-issued permit expires when the owner or name of the vessel changes.

(e) *Duration.* A federally-issued permit is valid until it expires or is revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Federal permits issued under this part are not transferable or assignable. A federally issued permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be displayed for inspection upon request of any authorized officer.

(j) *Sanctions.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any federally-issued permit under this part.

(l) *Change in application information.* The permit holder must report any change in the information specified in paragraph (b) of this section, such as the vesssel owner or quantity of gear, to the Regional Director within 15 days of the change.

[48 FR 36268, Aug. 10, 1983, as amended at 49 FR 1043, Jan. 6, 1984]

§ 649.5 Recordkeeping requirements. [Reserved]

§ 649.6 Vessel indentification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for all other vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part must—

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 649.7 Prohibitions.

(a) It is unlawful for any person issued a permit under § 649.4—

(1) To land or possess any American lobster which fails to meet the carapace length standards specified in § 649.20(b);

(2) To land or possess any American lobster or parts thereof in violation of the mutilation standards specified in §649.20(c);

(3) To retain on board, possess, or land any berried female American lobster;

(4) To remove eggs from any berried female American lobster, or to possess or land any such lobster from which eggs have been removed;

(5) To retain on board in the V-notch conservation area any lobster marked with a V-notch as specified in § 649.20(f) during the period September 7, 1983 through January 4, 1984;

(6) To possess, deploy, haul, harvest lobster from, or carry on board a vessel any gear not marked and vented in accordance with the requirements specified in § 649.21;

(7) To fail to affix and maintain permanent markings as required by § 649.6;

(b) It is unlawful for any person—

(1) To throw or dump into the water, or otherwise dispose of any lobster, or the contents of any pail, bag, barrel, or any matter whatsoever after being signalled by an authorized officer, before the authorized officer has inspected the same;

(2) To use any vessel for taking, catching, harvesting, or landing of any American lobster in the FCZ unless the vessel or operator has a valid permit issued under this part, and the permit is on board the vessel;

(3) To make any false statement in connection with an application under § 649.4; or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(4) To make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobster;

(5) To possess, have custody or control of, ship, transport, offer for sale,

sell, purchase, land, import or export any American lobster taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(6) To refuse to permit an authorized officer to board a fishing vessel, or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act;

(7) To forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(6) of this section;

(8) To resist a lawful arrest for any act prohibited by this part;

(9) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(10) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(11) To fail to comply immediately with enforcement and boarding procedures specified in § 649.8;

(12) To transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested American lobster to any foreign fishing vessel within the FCZ; or

(13) To violate any other provision of this part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 649.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

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(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "**AA**" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "**RY-CY**" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "**SQ3**" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "**L**" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 649.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 649.20 Harvesting and landing requirements.

(a) *Condition.* By accepting a Federal permit or a State permit endorsed for FCZ fishing, the permittee agrees that any lobster found on board or landed by a vessel with a permit issued, authorized, or required by this part will be treated as if it had been harvested in the FCZ subject to these regulations.

(b) *Carapace length.* Effective January 1, 1985, all lobsters landed in whole form must have a minimum carapace length of $3\frac{3}{16}$ inches.

(c) *Mutilation.* Except as provided in paragraph (c)(1) of this section, it will be unlawful for any person to remove meat or any body appendages from any lobster before landing.

(1) From the date of implementation of these regulations, through December 31, 1985, persons may land lobster tails in States which do not have regulations prohibiting such activity, providing the sixth tail segment measures at least $1\frac{1}{16}$ inches in length, and that not more than two claws are landed with each such tail.

(2) Effective January 1, 1986, it will be unlawful to land or have in possession on board any vessel any lobster part other than whole lobsters.

(d) *Berried females.* Any berried female American lobster must be immediately returned to the sea.

(e) *Scrubbing.* No person may remove extruded eggs attached to the abdominal appendages from any female American lobster.

(f) *Other conservation measures.* It will be unlawful for any fisherman to retain on board in the V-notch conservation arera any lobser bearing a V-shaped notch in the right flipper next to the middle flipper or any female lobster which is multilated in a manner which could hide or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination. This provision will remain in effect for a time period not to exceed 120 days (ending January 4, 1984), from the September 7, 1983 effective date of these regulations.

§ 649.21 Gear marking and escape vent requirements.

(a) *Marking.* Effective January 1, 1985, all lobster gear deployed in the FCZ or possessed by a person whose

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

vessel is permitted for fishing in the FCZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) The vessel's Federal fishery permit number; and/or

(2) Whatever positive identification marking is required by the vessel's homeport State.

(b) *Escape vents.* All lobster traps deployed in the FCZ or possessed by a person whose vessel is permitted for fishing in the FCZ must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) A rectangular portal with an unobstructed opening not less than $1\frac{3}{4}$ inches (44.5 mm) by six inches (152.5 mm);

(2) Two circular portals with unobstructed openings not less than $2\frac{1}{4}$ inches (57.2 mm) in diameter; or

(3) Any other vent certified by the Regional Director to release a substantial number of lobsters under $3\frac{3}{16}$ inches carapace length from the trap.

(c) *Enforcement action.* Unmarked, unvented, or improperly vented traps will be seized and disposed of at the discretion of the Regional Director.

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

Sec.

650.1 Purpose and scope.
650.2 Definitions.
650.3 Relation to other laws.
650.4 Vessel permits.
650.5 Recordkeeping and reporting requirements. [Reserved]
650.6 Vessel identification.
650.7 Prohibitions.
650.8 Enforcement.
650.9 Penalties.

Subpart B—Management Measures

650.20 Meat count and shell height standards.
650.21 Compliance and sampling procedures.
650.22 Review of resource status; temporary adjustment of standards.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 47 FR 35992, Aug. 18, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for Atlantic Sea Scallops, prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA). These regulations govern fishing for Atlantic sea scallops within that portion of the Atlantic Ocean over which the United States exercises fishery management authority.

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Area of custody means any vessel, building, vehicle, pier, or dock facility where Atlantic sea scallops may be found.

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State Agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish on board a vessel.

Council means the New England Fishery Management Council.

First transaction in the United States means the time and place at which Atlantic sea scallops.

(a) After being landed in the United States in the shell, are shucked;

(b) After being landed in the United States shucked, are mixed, sorted, or processed in any way; or

(c) Are certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Fish includes Atlantic sea scallops (*Placopecten magellanicus*).

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops and any amendments thereto.

Fishing, or *to fish*, means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Meat means the retained part of the scallop adductor muscle.

Meat count means the number of scallop meats required to make one pound of meats. A meat count of thirty means that one pound of scallops contains thirty meats. As the average scallop size increases, the meat count declines.

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, *unless* such scallops have been certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971 or the Vessel Documentation Act (46 U.S.C. 65).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Shell height is a straight line measurement from the umbo on the hinge, or anterior wing of the shell, to the outermost part of the curve of the leading edge.

Shucking or *to shuck* means opening scallops and separating the meat from the shell.

Trip is the period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel begins to offload fish in port.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the U.S. Coast Guard under U.S. law; or

(b) Any vessel under five net tons, which is registered under the laws of any State.

§ 650.3 Relation to other laws.

(a) All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924, in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

(b) Fishing vessel operators shall exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

[47 FR 35992, Aug. 18, 1982, as amended at 48 FR 31861, July 12, 1983]

§ 650.4 Vessel permits.

(a) *General.* Any vessel of the United States harvesting Atlantic sea scallops in quantities greater than 5 bushels in the shell or 40 pounds of meats per trip shall have a permit required by this part on board the vessel.

(b) *Application.* An application for a fishing vessel permit under this section shall be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application shall be submitted to the Regional Director and shall contain the following information:

(1) The name, mailing address, and telephone number of the applicant and the vessel's master;

(2) The name of the vessel;

(3) The vessel's official number;

(4) The home port, gross tonnage, and net tonnage of the vessel;

(5) The engine horsepower of the vessel;

(6) The approximate fish-hold capacity of the vessel in pounds of meats or unshucked scallops as appropriate;

(7) The type, quantity and size of fishing gear used by the vessel, including a statement as to whether all scallops harvested will be shucked at sea, or a portion of the catch will be landed in the shell; and

(8) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director must issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application must be considered abandoned.

(d) *Expiration.* A permit expires when the owner or name of the vessel changes.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be prominently displayed in the pilot house or offered for inspection upon request of any Authorized Officer.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section, such as the vessel owner or gear configuation, must be reported to the Regional Director within 15 days of the change.

(Approved by the Office of Management and Budget under control number 0648-0097)

[47 FR 35992, Aug. 18, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1043 Jan. 6, 1984]

§ 650.5 Recordkeeping and reporting requirements. [Reserved]

§ 650.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part. Numbers must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or state records.

(c) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 650.7 Prohibitions.

It is unlawful for any person:

(a) To possess, at or prior to the first transaction in the United States, any non-conforming Atlantic sea scallops. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.21, up to and including the first transaction in the United States.

(b) To use any vessel for taking, catching, harvesting, or landing any Atlantic sea scallops in excess of the amounts prescribed in § 650.4(a), unless the vessel has a valid permit issued under this part, and the permit is on board the vessel;

(c) To make any false statement in connection with an application under § 650.4, or to fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(d) To make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops;

(e) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export any Atlantic sea scallops taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(f) To fail to affix and maintain permanent markings as required by § 650.6.

(g) To refuse to permit an Authorized Officer to board a fishing vessel, or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act;

(h) To forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (g) of this section;

(i) To resist a lawful arrest for any act prohibited by this part;

(j) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(k) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(l) To fail to comply immediately with enforcement and boarding procedures specified in § 650.8;

(m) To transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel within the FCZ unless the foreign vessel has been issued a permit which authorizes the receipt by such vessel of U.S.-harvested fish of the species concerned;

(n) To violate any other provisions of this part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 650.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 650.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 650.20 Meat count and shell height standards.

(a) From May 15, 1982, through May 15, 1983, the meat count for shucked Atlantic sea scallops shall not exceed 40 meats per pound; the corresponding minimum shell height is 3¼ inches (83 mm). Thereafter, except as provided in paragraph (b) of this section, the meat count for shucked Atlantic sea scallops shall not exceed 30 meats per pound; the corresponding minimum shell height is 3½ inches (89 mm).

(b) The Regional Director may temporarily adjust the meat count and shell height standards in accordance with the procedures and criteria provided in § 650.22

§ 650.21 Compliance and sampling procedures.

Compliance with the specified meat count and shell height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows:

(a) *Shucked meats.* The Authorized Officer shall take one-pound samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten one-pound samples be examined as a sample group. A sample group fails to comply with the standard if the number of meats in each of any three one-pound samples exceeds the standard, or if the averaged meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

(b) *Scallops in the shell.* The Authorized Officer shall take samples of forty scallops each at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of the number of scallops in the sample group are less than the

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

shell height specified by the standard. The total amount of scallops in possession will be presumed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

§ 650.22 Review of resource status; temporary adjustment of standards.

(a) *Review of resource status.* The Regional Director shall review the status of the Atlantic sea scallop resource on a continuing basis, and shall, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require adjustment of the management program, or amendment of the FMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Temporary adjustment of standards.* (1) After May 15, 1983, the Regional Director may recommend that the standards contained in § 650.20 be adjusted, if he makes the finding required by paragraph (c) of this section after considering the information specified in paragraph (d) of this section.

(2) The standards can be adjusted only within a range from 25 to 40 meats per pound, (with appropriate and consistent shell height adjustment) and may be adjusted by no more than 5 meats per pound by any one adjustment.

(3) The Regional Director shall solicit and consider any recommendation of the Council regarding adjustment of standards, and, with the Council, will provide for public notice and comment, and hold a public hearing on the recommendation in conjunction with the Council meeting at which the recommendation is discussed.

(4) The Regional Director may modify his recommendation on the basis of comments from the Council or the public. After consideration of the full record the Regional Director may adjust the standards contained in § 650.20, and shall publish in the FEDERAL REGISTER notice of such change and the date when the adjusted standard will revert to a 30 meat count. Notice of any such adjustment will be mailed to each holder of a permit issued under § 650.4.

(5) Adjustments of the meat count and shell height standards may remain in effect for up to twelve months. No later than twelve months after the implementation of the most recent adjustment to the meat count and shell height standards, the Regional Director must review such adjustments. The Regional Director may renew the adjustment upon making a finding consistent with § 650.22 (c).

(c) *Criteria.* The Regional Director may adjust the standards specified in § 650.20 if he finds that:

(1) The objective of the FMP would be achieved more readily, would be better served through an adjustment of the prevailing standards;

(2) The recommended alteration in the standards would not reduce expected catch over the following year by more than 5% from that which would have been expected under the prevailing standard;

(3) The recommended standards for meat count and shell height are consistent with each other; and

(4) Inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery; or analysis of the size distribution of sea scallops shows that more than 50% of the harvestable sea scallop biomass is at sizes smaller than those consistent with the prevailing standards and that a temporary relaxation of the standards would not jeopardize future recruitment to the fishery.

(d) *Sources of information.* The Regional Director shall consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing any report or recommendation under this section. The Regional Director shall also consider: Reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

Subpart A—General Provisions

Sec.
651.1 Purpose and scope.
651.2 Definitions.
651.3 Relation to other laws.
651.4 Vessel permits.
651.5 Recordkeeping and reporting requirements. [Reserved]
651.6 Vessel identification.
651.7 Prohibitions.
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Subpart B—Management Measures

651.20 Large-mesh area and gear limitations.
651.21 Closed areas.
651.22 Optional settlement program.
651.23 Minimum fish size.

AUTHORITY: 16 U.S.C. 1801 et seq.

SOURCE: 47 FR 43709, Oct. 4, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 651.1 Purpose and scope.

The regulations in this part govern fishing for groundfish by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises fishery management authority. These regulations implement the Interim Fishery Management Plan for Atlantic Groundfish prepared and adopted by the New England Fishery Management Council, in consultation with the Mid-Atlantic Fishery Management Council, and approved by the Assistant Administrator.

§ 651.2 Definitions.

Some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations. In addition to the terms defined in the Magnuson Act, the terms used in this part shall have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where goundfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administraton (NOAA), Department of Commerce, 3300 Whitehaven Street, N.W., Washington, DC, 20235, or a designee.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(2) Any Special Agent of the National Marine Fisheries Service;

(3) Any officer deputized by the head of any Federal or State Agency which has entered into an agreement with the Secretary and the Commandant of the United States Coast Guard to enforce the provisions of the Magnuson Act; or

(4) Any United States Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish on board a vessel.

Charter and party boats means vessels carrying fishing parties on a per capita basis, or by charter for a fee.

Cod end means the terminal portion of an otter trawl, pair trawl, bean trawl, Scottish seine or mid-water trawl in which the catch is retained.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishing means any activity other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the

catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described above.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normaly used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Groundfish means any cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), or yellowtail flounder (*Limanda ferruginea*).

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882.

Official number means the documentation number issued by the United States Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in paragraph (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for groundfish with handheld gear for any use except sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Secretary means the Secretary of Commerce or a designee.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(1) Any vessel officially documented or numbered by the U.S. Coast Guard under U.S. law; or

(2) Any vessel under five net tons, which is registered under the laws of any State.

[47 FR 43709, Oct. 4, 1982, as amended at 49 FR 3190, Jan. 26, 1984]

§ 651.3 Relation to other laws.

(a) Fishing for squid, mackerel, and butterfish, which is affected by these rules, also is governed by other domestic rules under Chapter VI, Title 50 of the *Code of Federal Regulations*.

(b) Fishing vessel operators shall exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

[48 FR 31861, July 12, 1983]

§ 651.4 Vessel permits.

(a) *General.* Any vessel of the United States fishing for groundfish, except recreational fishing vessels, must have a permit required by this part on board the vessel. The special provisions for the use of small mesh nets contained in some permits issued prior to March 31, 1982, are no longer valid.

(b) *Application.* (1) An application for a fishing vessel permit for the groundfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's official number;

(iv) The home port, gross tonnage, and net tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type and quantity of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application will be considered abandoned.

(d) *Expiration.* A permit expires when the owner or name of the vessel changes.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The permit must be prominently displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit under this part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change.

(m) *Optional settlement program.* Any permit holder may request entry into the optional settlement program (§ 651.22) by telephoning 617-281-4454. The permit holder must give his/her name, permit number, and the starting and ending dates for participation in the program.

(Approved by the Office of Management and Budget under control number 0648-0097)

[47 FR 43709, Oct. 4, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1043, Jan. 6, 1984]

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part. Numbers must contrast to the background and be in block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, shall be that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(d) *Nonpermanent markings.* Vessels carrying fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for groundfish.

§ 651.7 Prohibitions.

It is unlawful for any person to:

(a) Fish within the large-mesh area specified in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) or (c), unless the vessel is registered in the optional settlement program established under § 651.22;

(b) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(c) While fishing in closed areas I or II, employ any modification to any gear that would, in effect, make it possible to fish for groundfish;

(d) Retain on board, land, or possess any groundfish smaller than the minimum sizes specified in § 651.23.

(e) Use any vessel, other than a recreational fishing vessel, for taking, catching, harvesting, or landing any groundfish unless the vessel has a valid permit required under this part, and the permit is aboard the vessel;

(f) Fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(g) Falsify or fail to make, keep, or maintain any record or report required by this part;

(h) Refuse to permit an Authorized Officer to make inspections, to inspect or copy any record relating to the taking, catching, harvesting, landing, purchase, or sale of any groundfish;

(i) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any fish;

(j) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, or export any groundfish taken in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(k) Fail to affix and maintain permanent or nonpermanent markings as required by § 651.6;

(l) Refuse to permit an Authorized Officer to board a fishing vessel, or to enter areas of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(m) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any inspection or search described in paragraph (l) of this section;

(n) Resist a lawful arrest for any act prohibited by this part;

(o) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(p) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing the Magnuson Act;

(q) Fail to comply with enforcement and boarding procedures specified in § 651.8;

(r) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel within the FCZ unless the foreign vessel has been issued a permit which authorizes the receipt by such vessel of U.S.-harvested fish of the species concerned;

(s) Violate any provision of the optional settlement program specified in § 651.22; or

(t) Violate any other provision of this part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 651.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 651.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 651.20 Large-mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within an area, which is bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(1) The point at which a line drawn on 69°20′W longitude intersects the outer boundary of the territorial sea;

(2) 43°40′N. latitude, 69°20′W. longitude;

(3) 43°40′N. latitude, 69°40′W. longitude;

(4) 41°50′N. latitude, 69°40′W. longitude;

(5) 41°50′N. latitude, 69°30′W. longitude;

(6) 41°40′N. latitude, 69°30′W. longitude;

(7) 41°40′N. latitude, 69°20′W. longitude;

(8) 41°30′N. latitude, 69°20′W. longitude;

(9) 41°30′N. latitude, 68°40′W. longitude;

(10) 41°40′N. latitude, 68°40′W. longitude;

(11) 41°40′N. latitude, 68°30′W. longitude;

(12) 41°50′N. latitude, 68°30′W. longitude;

(13) 41°50′N. latitude, 68°10′W. longitude;

(14) 42°00′N. latitude, 68°10′W. longitude;

(15) 42°00′N. latitude, 67°40′W. longitude;

(16) 42°10′N. latitude, 67°40′W. longitude;

(17) 42°10′ N. latitude, 67°09′ W. longitude;

(18) 41°00′ N. latitude, 66°10′ W. longitude;

(19) 41°00′N latitude, 67°00′W. longitude;

(20) 40°50′N. latitude, 67°00′W. longitude;

(21) 40°50′N. latitude, 67°40′W. longitude;

(22) 40°30′N. latitude, 67°40′W. longitude;

(23) 40°30′N. latitude, 70°00′W. longitude;

and the point where a line drawn on 70°00′W. longitude intersects the outer boundary of the territorial sea south of Nantucket Island. The shoreward boundary of the large-mesh area is the outer boundary of the territorial sea.

(b) *Trawl nets.* Except as provided for in § 651.22, the minimum mesh size for any trawl net or scottish seine used by a vessel fishing in the large-mesh area described in paragraph (a) of this section is 5⅛ inches in the cod end until March 31, 1983. Beginning on March 31, 1983, the minimum cod end mesh size will be 5½ inches.

(c) *Gill nets.* Except as provided for in § 651.22, the minimum mesh size for any gill net used by a vessel fishing in the large-mesh area described in paragraph (a) of this section is 5½ inches.

(d) *Mesh measurements.* (1) Cod end mesh sizes are measured when wet after use by a wedge shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least 10 meshes from the lacings, beginning at the after-end and running parallel to the long axis, except that if the fish in the cod end extend into any other portion of the net, measurement will start at the uppermost portion of the net containing fish.

(2) No fishing vessel may use any means or device, including, but not limited to, chafing gear, liners, or double nets, if it would obstruct the meshes of the cod end or otherwise diminish the size of the meshes of the cod end. However, canvas, netting, or other material may be attached to the underside of the cod end to reduce wear and prevent damage. Net strengtheners may be attached to the cod end of trawl nets, providing such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

[47 FR 43709, Oct. 4, 1982, as amended at 49 FR 3190, Jan. 26, 1984; 50 FR 8735, Mar. 5, 1985]

§ 651.21 Closed areas.

(a) *General.* Except as allowed by paragraph (b) of this section, no person may fish within the following areas during the months of March, April, and May:

(1) An area known as Closed Area I, bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(i) 41°50′N. latitude, 69°40′W. longitude;

(ii) 40°53′N. latitude, 68°58′W. longitude;

(iii) 41°35′N. latitude, 68°30′W. longitude;

(iv) 41°50′N. latitude, 68°45′W. longitude;

(v) 41°50′N. latitude, 69°40′W. longitude;

(2) An area known as Closed Area II bounded by straight lines connecting the following coordinates in the order stated:

(i) 41°59′ N. latitude, 67°00′ W. longitude;

(ii) 41°15′ N. latitude, 67°00′ W. longitude;

(iii) 41°15′ N. latitude, 66°22′ W. longitude; and

(iv) 41°59′ N. latitude, 67°00′ W. longitude.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Longline vessels that fish in Closed Area I with hooks having a gape of not less than 1.18 inches (30 mm).

(2) Vessels that fish in Closed Area I or II using only the following fishing gear:

(i) Pot gear designed and used to take lobsters; or

(ii) Dredges designed and used to take scallops.

[47 FR 43709, Oct. 4, 1982, as amended at 50 FR 8735, Mar. 5, 1985]

§ 651.22 Optional settlement program.

(a) *General.* The Regional Director will establish and implement an optional settlement program to allow fishing vessels to engage in legitimate small-mesh fisheries within the large-mesh area defined in § 651.20(a). The Regional Director will maintain a list of small-mesh species to which the optional settlement program applies. He may add a species to the list if he finds that fishing for that species requires small-mesh gear and does not result in a significant harvest of groundfish. Notice of addition to the list will be mailed to all permit holders.

(b) *Entry.* (1) Any person holding a valid Federal groundfish permit may apply to fish under the optional settlement program by following the procedures set forth in § 651.4(m).

(2) The period of participation must be for at least 7 days, but not longer than six months. There is no limit on the number of times a vessel can apply to participate in the optional settlement program.

(c) *Certification.* (1) The Regional Director may certify in writing the entry of the applicant into the optional settlement program. Entry may be denied to an applicant based upon previous violations of the Magnuson Act or these regulations. Any applicant denied entry into the optional settlement program may request a hearing. The hearing will be conducted in accordance with the procedures of 50 CFR 621.56. Mail requests to the Assistant Administrator for Fisheries, NMFS, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

(2) Entry of the applicant into the optional settlement program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the optional settlement program may begin after the applicant has received the certification from the Regional Director, provided that a copy of the certification is retained on board the vessel and displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(e) *Limitations.* (1) During the participation period, the total landings of a participating vessel must be at least 50 percent by round weight of the species on the Regional Director's list under § 651.22(a).

(2) During the participation period, a participating vessel may not land groundfish in quantities exceeding 15 percent of its total landings. This means that the combined total landings of cod, haddock, and yellowtail flounder cannot exceed 15 percent of the vessel's total landings, regardless of the area of the Northwest Atlantic in which they were caught.

(3) The Regional Director may increase this allowed percentage of combined cod, haddock, and yellowtail flounder landings by publication in the FEDERAL REGISTER if he finds that a different percentage is necessary to conduct the small-mesh fisheries.

(f) *Recordkeeping and reporting.* Within one week from the expiration of the participation period or withdrawal from the program under paragraph (g) of this section, or receipt of a notice of revocation under paragraph (h) of this section, the participant shall mail or deliver to the Regional Director a NOAA Form 88-153 "Fishing Vessel Record" listing, in pounds, all fish landed during the participation period. The participant shall maintain landing records throughout the participation period, and, if requested, shall present such records to any Authorized Officer within a reasonable time, not to exceed two working days.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period specified by the participant under § 651.4(m), or when the owner or vessel name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of the applicant in the optional settlement program by issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and take effect upon receipt by the participant. Any applicant whose certification is revoked may request a hearing. The hearing will be conducted in accordance with the procedures of 50 CFR 621.56. Mail requests to the Assistant Administrator for Fisheries, NMFS, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

(The recordkeeping and reporting requirements in paragraph (f) were approved by the Office of Management and Budget under control number 0648-0016)

[47 FR 43709, Oct. 4, 1982, as amended at 48 FR 34762, Aug. 1, 1983]

§ 651.23 Minimum fish size.

(a) The minimum size (total length) for any groundfish is:

(1) *Commercial.*

Cod and haddock: 17 inches
Yellowtail flounder: 11 inches.

(2) *Recreational fishing vessels, charter and party boats.*

Cod and haddock: 15 inches
Yellowtail flounder: 11 inches.

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail.

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 47 FR 4270, Jan. 29, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 652.1 Purpose.

This part regulates fishing for surf clams (*Spisula solidissima*) and ocean quahogs (*Arctica islandica*) in the Atlantic Ocean fishery conservation zone.

§ 652.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, DC 20235.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified Enforcement or Special Agent of the NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bushel means a standard unit of measure presumed to hold 1.88 cubic feet of surf clams or ocean quahogs in the shell.

Cage means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are 3′ wide, 4′ long and 5′ high.

Council means the Mid-Atlantic Fishery Management Council.

Directed fishery means, with respect to any species, a fishery conducted for the purpose of catching that species.

Fish means any finfish, mollusks (including surf clams and ocean quahogs), crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

Fishery Conservation Zone (FCZ) means the zone contiguous to the territorial sea of the United States, the inner boundary of which is a line coterminous with the seaward boundary of each of the coastal States and the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishing means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

The term "fishing" does not include any scientific research activity which is conducted by any scientific research vessel.

Fishing trip means a departure from port, transit to the fishing grounds, fishing, and discharge of any part of the catch on board.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Georges Bank Area means that portion of the New England Area east of 69° W. longitude.

Home Port means that port listed as home port on a vessel permit on file with NMFS.

Home Port Area, for vessels whose home port is in one of the Mid-Atlantic States, means the Mid-Atlantic Area; for vessels whose home port is in one of the New England states, means the Nantucket Shoals Area.

Mid-Atlantic Area means that portion of the FCZ in the Atlantic Ocean south of a rhumb line connecting the point 41°18.27′ N. latitude and 71°54.47′ W. longitude with the point 38°03.4′ N. latitude and 68°41.7′ W. longitude, the outward boundary of the FCZ.

Mid-Atlantic States means the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, or Virginia.

Nantucket Shoals Area means that portion of the New England Area west of 69° W. longitude.

New England Area means that portion of the FCZ in the Atlantic Ocean north of a rhumb line connecting the point 41°18.27′ N. latitude and 71°54.47′ W. longitude with the outward boundary of the FCZ at 38°03.4′ N. latitude and 68°41.7′ W. longitude. This includes the fishing areas designated as the Nantucket Shoals Area and the Georges Bank Area.

New England States means the States of Connecticut, Rhode Island, Massachusetts, New Hampshire, or Maine.

NMFS means the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration.

Notification Zone means

(a) For vessels authorized to fish in both the Mid-Atlantic and New England Areas with home ports in the Mid-Atlantic Area, the Nantucket Shoals and Georges Bank Areas are notification zones.

(b) For vessels authorized to fish in both the Mid-Atlantic and New England Areas with home ports in the New England Area, the Mid-Atlantic and Georges Bank Areas are notification zones.

(c) For vessels authorized to fish only in the New England Area, the Georges Bank Area is a notification zone.

Operator means, with respect to any vessel, the master or other individual on board and in charge of that vessel.

Owner means, with respect to any vessel:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel.

Person means any individual, corporation, partnership, association, or other entity.

Personal use means harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bushels per person per trip.

Regional Director means the Regional Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930-3799. Telephone 617-281-3600.

Secretary means the Secretary of Commerce or the designee of the Secretary.

Vessel of the United States means:

(a) A vessel documented or numbered by the Coast Guard under United States law; or

(b) A vessel, under five net tons, which is registered under the laws of any State.

[47 FR 4270, Jan. 29, 1982, as amended at 50 FR 32710, Aug. 14, 1985]

EFFECTIVE DATE NOTE: At 50 FR 23015, May 30, 1985, an emergency interim rule was issued amending § 652.2 by adding the new definitions "Georges Bank Area," "Home Port Area," "Home Port," "Mid-Atlantic States," "Nantucket Shoals Area," "New England States," and "Notification Zone" in alphabetical sequence and by adding a new last sentence in the definition "New England Area." The emergency rule was effective from May 24, 1985, until August 21, 1985. At 50 FR 34145, Aug. 23, 1985, the effective date was extended through November 18, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 652.2 Definitions.

* * * * *

Georges Bank Area means that portion of the New England Area east of 69°W. longitude.

Home Port Area, for vessels whose home port is in one of the Mid-Atlantic States, means the Mid-Atlantic Area; for vessels whose home port is in one of the New England States, means the Nantucket Shoals Area.

Home Port means that port listed on a vessel permit issued by MNFS.

* * * * *

Mid-Atlantic States means the States of New York, New Jersey, Pennsylvania, Delaware, Maryland or Virginia.

Nantucket Shoals Area means that portion of the New England Area west of 69°W. longitude.

New England Area * * * This includes the fishing areas designated as the Nantucket Shoals Area and the Georges Bank Area.

New England States means the States of Connecticut, Rhode Island, Massachusetts, New Hampshire or Maine.

Notification Zone means an area in which a vessel holds a permit to fish that is other than its home port area.

* * * * *

§ 652.3 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators shall exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting fron intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

[48 FR 31861, July 12, 1983]

§ 652.4 Permits.

(a) *General*—(1) *Requirement.* A vessel owner or operator must obtain a permit in order to:

(i) Conduct a directed fishery for surf clams or ocean quahogs within the FCZ, or

(ii) Land or transfer to another vessel any surf clams or ocean quahogs or part thereof caught within the FCZ.

(2) *Exemption.* Vessels taking surf clams or ocean quahogs for personal use are exempt from this section.

(b) *Eligibility*—(1) *Surf clams—New England and Mid-Atlantic Areas.* A vessel is eligible for a permit to harvest surf clams in both the New England and Mid-Atlantic Areas if it meets any of the following criteria:

(i) The vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for surf clams on November 17, 1977. For the purpose of this paragraph, "under construction" means that the keel had been laid, and "being rerigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person.

(2) *Surf clams—New England Area only.* Any vessel of the United States is eligible for a permit allowing it to harvest surf clams in the New England Area only.

(3) *Ocean quahogs.* Any vessel of the United States is eligible for a permit allowing it to harvest ocean quahogs only.

(c) *Application.* Permit applications may be obtained by contacting the Regional Director. The owner or operator may apply for a permit by submitting an application form supplied by the Regional Director containing at least the following information:

(1) Names, mailing addresses, and telephone numbers of the owner and operator;

(2) The name of the vessel;

(3) The vessel's U.S.Coast Guard documentation number or State license number;

(4) Engine and pump horsepower;

(5) Homeport of the vessel;

(6) Directed fishery or fisheries;

(7) Fish hold capacity (in cages or bushels);

(8) Dredge size and number of dredges;

(9) Amount of surf clams and ocean quahogs landed between November 18, 1976, and November 17, 1977 (in bushels, if applicable);

(10) Number of fishing trips between November 18, 1976, and November 17, 1977;

(11) Date of beginning of construction or rerigging (if applicable);

(12) Signature of the owner or operator; and

(13) Any other information which may be necessary for the issuance or administration of the permit.

(d) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the permit.

(e) *Appeal of denial of permit.* (1) Any applicant denied a permit by the Regional Director may appeal to the Assistant Administrator for review of the denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(i) Applicant believes denial was in error;

(ii) Applicant was prevented by circumstances beyond his control from meeting relevant criteria;

(iii) Applicant has new or additional information which might change the initial decision; or

(iv) Applicant can show that significant and unusual hardship will result from the denial.

(2) The appeal may be presented, at the option of the applicant, at a hearing before a person appointed by the Assistant Administrator to hear the appeal.

(3) The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

(f) *Transfer.* A permit is valid only for the vessel for which it is issued.

(g) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request of any authorized official.

(h) *Expiration.* Except as provided in paragraph (h)(2) of this section, a permit will expire:

(1) When the owner or operator retires the vessel from the fishery (it is a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery), or

(2) When the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the surf clam fishery if the new owner so requests and the vessel meets the relevant criteria of eligibility set forth in § 652.4(b). Applications for continuation of a permit must be addressed to the Regional Director.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(Approved by the Office of Management and Budget under control number 0648-0097)

[47 FR 4270, Jan. 29, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1043, Jan. 6, 1984]

§ 652.5 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Any person who buys surf clams and ocean quahogs from a fishing vessel subject to these regulations shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Name and mailing address of dealer or processing plant;

(ii) Name and permit number of the vessel from which surf clams or ocean quahogs are landed or received;

(iii) Dates or purchases;

(iv) Number of bushels purchased, by species;

(v) Price per bushel, by species;

(vi) Meat yield per bushel, by species; and

(vii) Tag numbers from cages purchased, by vessel.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director.

(i) Number of dealer or processing plant employees during each month of the year just ended;

(ii) Number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; and

(iv) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iii) of this section.

If the capacities described in paragraph (a)(2)(iii) of this section change more than ten percent during any year, the processor shall promptly notify the Regional Director of the change in capacity.

(3) *At-sea activities.* All persons purchasing, receiving, or processing any surf clams or ocean quahogs at sea for transport to any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director on the same frequency basis.

(b) *Owners and operators*—(1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in bushels of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Locality fished;

(vii) Crew size;

(viii) Crew share by percentage;

(ix) Landing port;

(x) Date sold;

(xi) Price per bushel;

(xii) Buyer; and

(xiii) Tag numbers from cages used.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill out such logbooks before landing any surf clams or ocean quahogs at the end of any fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized officer, or by an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the log, the owners or operator shall keep each logbook at the owner's or operator's principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied by the Regional Director. If no fishing trip is made during a week, a report so stating must be submitted.

(6) *Annual reports.* All persons required to submit reports under paragraph (b) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: name of the vessel, vessel's U.S. Coast Guard Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

(7) *Notification of intention to fish.* (i) Vessel owners or operators must inform the Regional Director in writing not less than 15 days before fishing in a notification zone may begin.

The written notification should include the following information:

(A) Permit number of vessel;

(B) Notification zone in which vessel will fish;

(C) Date on which vessel will begin fishing in the specified notification zone, and

(D) Name and address of vessel owner, operator, or authorized person providing notification.

(ii) The Regional Director will issue a letter to the vessel owner or operator specifying the date, 15 days after receipt of notification, on which fishing in a notification zone may begin.

(iii) Vessel owners or operators who must give notice in order to fish in a notification zone include:

(A) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the Mid-Atlantic States who intend to fish in the Nantucket Shoals or Georges Bank Areas;

(B) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the New England States who intend to fish in the Mid-Atlantic or Georges Bank Area; and

(C) Owners or operators of vessels with permits to fish only in the New England Area who intend to fish in the Georges Bank Area.

(iv) To change the vessel's area of fishing from one notification zone to another notification zone, the vessel owner or operator must notify the Regional Director in writing not less than 15 days in advance of the date fishing is to begin.

(v) To resume fishing in the home port area, the vessel owner or operator must notify the Regional Director not less than 24 hours before fishing in the home port area is to resume.

(vi) Notifications received by the Regional Director are cancelled if:

(A) Appropriate notice is given under § 652.5(b)(7) (iv) or (v),

(B) A vessel intends to leave the home port area to fish in a notification zone, but fishes for surf clams in the home port area past the date on which fishing in the notification zone was scheduled to begin without notifying the Regional Director, and

(C) A vessel fishing in a notification zone returns to fish for surf clams in the home port area without notifying the Regional Director.

(c) Vessel owners or operators with permits to fish only in the New England Area are subject to the requirements of this section. "Nantucket Shoals" is substituted for "home port area" in all applicable sections.

(Paragraphs (a)(2) (iii) and (iv) were approved by the Office of Management and Budget under control number 0648-0114 and the remaining paragraphs of (a) under control number 0648-0013; paragraph (b)(5) was approved under control number 0648-0016; paragraphs (b)(7) and (c) were approved under control number 0648-)

[47 FR 4270, Jan. 29, 1982, as amended at 48 FR 34762, Aug. 1, 1983; 50 FR 11169, Mar. 20, 1985; 50 FR 32710, Aug. 14, 1985]

EDITORIAL NOTE: The information collection requirements contained in paragraphs (b)(7) and (c) of § 652.5 have been submitted to the Office of Management and Budget for approval. Upon approval by OMB a notice will be published in the FEDERAL REGISTER making these paragraphs effective September 8, 1985.

EFFECTIVE DATE NOTE: At 50 FR 23015, May 30, 1985, an emergency interim rule was issued amending § 652.5 by adding paragraph (b)(7), effective from May 24, 1985 until August 21, 1985. At 50 FR 34154, August 23, 1985, the effective date was extended through November 18, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 652.5 Recordkeeping and reporting requirements.

* * * * *

(b) *Owners and Operators.*

* * * * *

(7) *Notification of intention to fish.* (i) Vessel owners or operators who intend to fish in a notification zone must inform the Regional Director of their intention, in writing, not less than 15 days before fishing is to begin. The Regional Director will issue a letter to the vessel owner or operator specifying the date, 15 days afte receipt of notification, on which fishing in a notification zone may begin.

(ii) Vessel owners or operators who must give notice in order to fish in a notification zone include:

(A) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the Mid-Atlantic and New England Areas and with home ports in the Mid-Atlantic States who intend to fish in the Nantucket Shoals or Georges Bank Areas;

(B) Owners or operators of vessels with permits to fish in both the Mid-Atlantic and New England Areas and with home ports in the New England States who intend to fish in the Mid-Atlantic or Georges Bank Areas, and

(C) Owners or operators of vessels with permits to fish only in the New England Area who intend to fish in the Georges Bank Area.

(iii) If the owner or operator intends to change the vessel's area of fishing from one notification zone to another notification zone, the Regional Director must be notified of such intention, in writing, not less than 15 days before fishing is to begin.

(iv) If a vessel owner gives proper notice and intends to delay the date on which fishing in the notification zone was to begin, the Regional Director must be notified of the delay no less than 24 hours before fishing was originally scheduled to begin.

(v) If the vessel owner or operator gives proper notice and intends to leave the notification zone to return to the home port area, the Regional Director must be notified of such intention not less than 24 hours before fishing in the home port area is to resume.

* * * * *

§ 652.6 Vessel identification.

(a) *Official number.* The operator of each fishing vessel 25 feet in length or longer subject to these regulations shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the Coast Guard for undocumented vessels.

(b) *Markings.* Such markings must be at least eighteen (18) inches in height for fishing vessels over 65 feet in length, and at least ten (10) inches in height for all other vessels over 25 feet in length. The official number must be permanently affixed to or painted on the vessel and must be block Arabic numerals of a color that contrasts with the background.

(c) *Duties of the operator.* The operator of each vessel shall:

(1) Keep the required identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) *New Jersey vessels.* Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that State.

§ 652.7 Prohibitions.

(a) No permit holder shall catch and retain on board any surf clams or ocean quahogs:

(1) During closed seasons; or

(2) In closed areas as specified in these regulations; or

(3) On days of the week in which fishing for these species is not authorized; or

(4) Without having provided the notice required by §652.5(b)(7).

(b) No person shall fish for surf clams except during the authorized time period(s) assigned to the vessel he is operating.

(c) No person shall catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

(d) No person shall possess, have custody of, or control of, ship, transport, offer for sale, deliver for sale, sell, purchase, import, export, or land, any surf clams, ocean quahogs, or parts thereof, which were taken in violation of the Act, these regulations, or any other regulations issued under the Act.

(e) No person engaged in the surf clam or ocean quahog fisheries as an owner or operator, or as a dealer, processor, buyer, or receiver shall unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by § 652.5.

(f) No person shall: (1) Refuse to permit an authorized officer to board a fishing vessel subject to such a person's control for purposes of conducting any search or inspection, no matter where that vessel may be located, in connection with the enforcement of the Act, these regulations, or any other regulations issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by these regulations; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing or being advised by authorities that such other person has committed any act prohibited by these regulations.

(g) No person shall use any fishing vessel to engage in fishing without a permit, unless exempted under § 652.4(a)(2), or after the revocation, or during the period of suspension, of an applicable permit issued under § 652.4.

(h) No person shall alter, erase or mutilate:

(1) Any permit issued under § 652.4.

(2) Any letter of authorization issued under § 652.22.

(3) Any surf clam cage tags issued under § 652.11(b).

(i) No person may posses surf clams taken in violation of the size limit prescribed in § 652.25.

(j) No person may possess surf clams harvested under this FMP in containers that are not tagged as required by § 652.11.

(k) No person may use surf clam cage tags issued under § 652.11(b) in a manner inconsistent with the terms of § 652.11(c).

(l) No person may fish for surf clams in a notification zone or resume fishing in a home port area prior to the vessel's owner or operator notifying the Regional Director as specified by these regulations.

(m) No person shall violate any other provision of the Act, these regulations, or any applicable permit issued under § 652.4.

[47 FR 4270, Jan. 29, 1982, as amended at 49 FR 49094, Dec. 18, 1984; 50 FR 11169, Mar. 20, 1985; 50 FR 32710, Aug. 14, 1985]

EDITORIAL NOTE: The information collection requirements contained in paragraphs (a)(4) and (l) of § 652.7 have been submitted to the Office of Management and Budget for approval. Upon approval by the OMB a notice will be published in the FEDERAL REGISTER making these paragraphs effective September 8, 1985.

EFFECTIVE DATE NOTE: At 50 FR 23016, May 30, 1985, an emergency interim rule was issued amending § 652.7 by adding a new paragraph (a)(4); suspending paragraph (i) from May 24, 1985, until August 21, 1985; and adding new paragraphs (m) and (n), effective from May 24, 1985, until August 21, 1985. At 50 FR 34154, Aug. 23, 1985, the effective date and suspension was extended through November 18, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 652.7 Prohibitions.

(a) * * *

(4) No permit holder may fish for any surf clams or ocean quahogs without having provided the notice required by § 652.5(b)(7).

* * * * *

(m) No person may possess surf clams taken in violation of the size limit prescribed in § 652.25.

(n) A vessel may not fish for surf clams in a notification zone prior to the vessel's owner or operator notifying the Regional Director as specified by these regulations.

* * * * *

§ 652.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high fre-

quency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 652.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

§ 652.10 Foreign fishing.

Fishing for surf clams or ocean quahogs in the FCZ by any vessel other than a vessel of the United States is prohibited.

[47 FR 4270, Jan. 29, 1982. Redesignated at 48 FR 31861, July 12, 1983]

§ 652.11 Cage identification.

(a) *Tagging.* Before off-loading, all cages and other containers that contain surf clams must be tagged with tags provided annually by the Regional Director under paragraph (b) of this section. Tags must be fixed on or as near as possible to the upper crossbar of the cage or container, or to the corresponding part of a tub or other con-

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

tainer used for carrying the clams. Tags must not be removed until cages are emptied at the processing plant, at which time the processor must promptly remove and retain them for collection or disposal as specified by the Regional Director.

(b) *Acquisition and return of tags.* (1) An initial supply of tags will be issued to each individual vessel by the Regional Director prior to the beginning of each fishing year. The number of tags issued will be based on the previous year's landings.

(2) Additional tags may be obtained, if required, by the vessel owner, master, or mate, upon written request to the Regional Director.

(3) Tags will expire at the end of the fishing year for which they were issued. Unused tags must be returned to the Regional Director within 30 days after the end of the fishing year.

(c) *Use of tags.* (1) Tags are not transferable among vessels, and must be returned when a permit expires by reason of a vessel's being sold or otherwise removed from the fishery.

(2) Alteration, theft, destruction, transfer, or other misuse of tags is a violation of these regulations.

(3) Loss or theft of tags must be reported to the Regional Director in writing within twenty-four hours.

(4) Any cage of surf clams harvested within the jurisdiction of this FMP that is found in commerce without a tag is in violation of these regulations.

(5) Processors must promptly remove the used tag after a cage is emptied, and retain the tag for collection or disposal as specified by the Regional Director.

(d) *Presumption.* Clams in cages or containers with colored numbered tags matching those issued to a vessel under these regulations will be presumed to have been taken by that vessel.

[50 FR 11169, Mar. 20, 1985]

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) *Surf clams: Mid-Atlantic Area.* The amount of surf clams which may be caught in the Mid-Atlantic Area by fishing vessels subject to these regulations will be specified annually within the range of 1,800,000 and 2,900,000 bushels. This annual quota will be divided into equal quarterly quotas, the quarters being January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(1) *Establishing quotas.* Prior to the beginning of each year, the Regional Director will prepare a written report, based on the latest available stock assessment report prepared by the National Marine Fisheries Service, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to optimum yield;

(ii) Fishing mortality rates relative to optimum yield;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches; and

(v) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the information presented in the report, and in consultation with the Council, the Secretary will propose an annual surf clam quota and will publish it in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments, determine an appropriate annual quota, and publish the annual quota in the FEDERAL REGISTER.

(3) *Adjustments.* If the actual catch of surf clams in any one quarter falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director will add the amount of the shortfall to the succeeding quarterly quotas. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the succeeding quarterly quotas. The last quarterly period

would be carried over to the first quarterly period of the next year.

(4) *Notice.* The Secretary will publish a notice in the FEDERAL REGISTER whenever an adjustment is made to the quarterly quota for surf clams. The Regional Director will send notice of any adjustment of the annual quota to each surf clam processor and to each licensed surf clam vessel operator.

(b) *Surf Clams: Nantucket Shoals Area.* The amount of surf clams which may be harvested in the Nantucket Shoals Area by fishing vessels subject to these regulations will be specified annually within the range of 25,000 to 200,000 bushels, using the procedures and criteria set forth in § 652.21(a)(1), (2), and (4).

(c) *Surf clams: Georges Bank Area.* The amount of surf clams which may be caught in the Georges Bank Area by fishing vessels subject to these regulations will be specified annually within the range of 25,000 and 300,000 bushels, using the procedures and criteria set forth in § 652.21(a). This annual quota will be divided into quarterly quotas, the quarters and proportion of the quota being January 1-March 31, 10 percent; April 1-June 30, 40 percent; July 1-September 30, 40 percent; and October 1-December 31, 10 percent. Each fishing quarter will begin on the first Sunday of the new calendar quarter.

(d) *Ocean Quahogs.* The amount of ocean quahogs which may be caught by fishing vessels subject to these regulations will be specified annually between 4,000,000 and 6,000,000 bushels, using the procedures and criteria set forth in § 652.21(a). If necessary, the Regional Director may establish quarterly quotas for ocean quahogs, which will be based on historical fishing patterns. In that event, the Secretary will publish notice of such quarterly quotas in the FEDERAL REGISTER. In the event that the Regional Director establishes quarterly quotas for ocean quahogs, if the actual catch of ocean quahogs falls more than 5,000 bushels short of the specified quarterly quota, he will add the amount of the shortfall to the succeeding quarterly quotas. If the actual catch of ocean quahogs in any quarter exceeds the specified quarterly quota, the Regional Director will subtract the amount of the excess from the succeeding quarterly quotas.

[47 FR 4270, Jan. 29, 1982, as amended at 50 FR 32710, Aug. 14, 1985]

EFFECTIVE DATE NOTE: At 50 FR 23016, May 30, 1985, an emergency interim rule was issued amending § 652.21 by suspending paragraph (b) from May 24, 1985, until August 21, 1985, and adding new paragraphs (d) and (e), effective from May 24, 1985, until August 21, 1985. At 50 FR 34154, Aug. 23, 1985, the effective date and suspension was extended through November 18, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 652.21 Catch quotas.

* * * * *

(d) *Surf clams: Nantucket Shoals Area.* The maximum annual quota for surf clams in the Nantucket Shoals Area is specified at 200,000 bushels.

(e) *Surf clams: Georges Bank Area.* The maximum annual quota for surf clams in the Georges Bank Area is specified at 300,000 bushels. This quota is divided into quarterly allocations, the quarters and proportion of the quota being January 1-March 31, 10 percent; April 1-June 30, 40 percent; July 1-September 30, 40 percent; and October 1-December 31, 10 percent. An unused portion of a quarterly allocation will be added to the next quarter. Each fishing quarter will begin on the first Sunday of the new calendar quarter. The quarterly allocations for the duration of this action will be selected according to the quarter(s) that this action is in effect.

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§ 652.22 Effort restrictions.

(a) *Surf clams—Mid-Atlantic Area*—(1) *The fishing week.* Fishing for surf clams will be authorized only during the period beginning 0001 hours Sunday and ending 1800 hours Thursday.

(2) *Hours.* The Regional Director will notify each owner or operator of a fishing vessel engaged in the surf clam fishery in the Mid-Atlantic Area concerning the allowable combinations of fishing periods for varying levels of allowable fishing time. The vessel owner or operator must send the Regional Director written notice of the owner or operator's selection or cancellation

of allowable surf clam fishing periods for that vessel. All selections or cancellations must be provided to the Regional Director no less than 15 days prior to the intended effective date. The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization must be kept aboard the vessel at all times. Fishing may be conducted only during the times and under those conditions authorized by the Regional Director in the letter of authorization. Fishing for any part of an authorized period will be counted as one day of fishing. In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds. The presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period shall be prima facie evidence that the vessel is fishing in violation of these regulations.

(3) *Allowable fishing time.* The Regional Director may revise allowable fishing times (hours per week, hours per month, or hours per quarter) to allow fishing for surf clams to be conducted throughout the entire year with the minimum number of changes to fishing times.

(i) *Reduction.* If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota for surf clams [as adjusted under § 652.21(a)(3)] probably will be exceeded, the Secretary may reduce the allowable fishing time.

(ii) *Increase.* If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams [as adjusted under § 652.21(a)(3)] probably will not be harvested, and that the catch rate has not diminished as a result of a decline in abundance of stocks of surf clams, the Secretary may increase allowable fishing time to facilitate the harvest of the full quarterly quota.

(4) *Make-up periods.* During November, December, January, February, March, and April, fishermen may claim a make-up period, if in the opinion of the vessel operator, weather or sea conditions would prevent effective fishing or endanger the vessel or crew.

(i) To claim the make-up period, the vessel owner or operator must contact the NMFS before the scheduled authorized fishing period starts. The Regional Director will notify each vessel owner or operator in writing as to the procedure to follow in contacting NMFS.

(ii) The make-up period will be equal in length to the scheduled authorized fishing period, and will begin 24 hours after the scheduled beginning of said period, except that if the make-up period could not then be completed before the end of the fishing week on Thursday at 1800 hours, then the make-up period begins on the following Sunday.

(iii) Before using this make-up provision, each vessel owner must notify the Regional Director, in writing, of the port from which the vessel fishes. If that port changes, the vessel owner must promptly notify the Regional Director of the change, in writing.

(iv) Any vessel which uses a make-up period without claiming it under this procedure, or which fishes under a scheduled authorized fishing period for which it has claimed a make-up period, is liable to forfeit its use of the make-up provision in the future; the vessel and its owner or operator also may be subject to other penalties as prescribed in § 652.9 of these regulations.

(b) *Surf clams: Nantucket Shoals Area.* (1) *The fishing week.* Fishing for surf clams will be allowed seven days per week. The fishing week begins at 0001 hours Sunday and ends at 2400 hours Saturday.

(2) *Management measure adjustments.* When 50 percent of the quota of surf clams established under § 652.21(b) for the New England Area has been caught, the Regional Director will, on review of available information and public comment, deter-

mine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Secretary may reduce the number of days per week, or establish authorized periods, during which fishing for surf clams is permitted.

(c) *Ocean Quahogs*—(1) *Allowable fishing time.* Fishing for ocean quahogs will be allowed seven days per week.

(2) *Revisions.* When 50 percent of the quota of ocean quahogs for any time period indicated in § 652.21(c) of this part has been caught, the Regional Director will, on review of available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the quota will be exceeded, the Secretary may reduce the number of days during which fishing for ocean quahogs is allowed.

(d) *Closures.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period will be exceeded, the Secretary will publish a notice in the FEDERAL REGISTER stating the determination and stating a date and time for closure of the fishery.

(e) *Notices.* The Secretary will publish a notice in the FEDERAL REGISTER of any change in allowable fishing times. The Regional Director will send notice of any closure or any change in allowable fishing times to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(f) *Presumption.* (1) The presence of surf clams or ocean quahogs aboard any vessel engaged in the surf clam or ocean quahog fishery, or the presence of any part of a vessel's gear in the water more than 12 hours after a closure occurs under this section, will be prima facie evidence that such surf clams or ocean quahogs were taken in violation of these regulations.

(2) The landing or possession of surf clams harvested by a vessel permitted under this FMP on a day during which such vessel was authorized to fish in the FCZ will be *prima facie* evidence that such surf clams were caught in the FCZ and are subject to the Federal size limit.

[47 FR 4270, Jan. 29, 1982, as amended at 49 FR 49094, Dec. 18, 1984; 49 FR 49473, Dec. 20, 1984; 50 FR 11169, Mar. 20, 1985; 50 FR 32711, Aug. 14, 1985]

EFFECTIVE DATE NOTE: At 50 FR 23016, May 30, 1985, an emergency interim rule was issued amending § 652.22 by suspending paragraph (b) from May 24, 1985, until August 21, 1985 and adding new paragraphs (g) and (h), effective from May 24, 1985, until August 21, 1985. At 50 FR 34154, Aug. 23, 1985, the effective date and the suspension was extended through November 18, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 652.22 Effort restrictions.

* * * * *

(g) *Surf clams: Nantucket Shoals Area*—(1) *The fishing week.* Fishing for surf clams will be allowed seven days per week. This fishing week begins at 0001 hours Sunday and ends at 2400 hours Saturday, local time.

(2) *Management measure adjustments.* When 50 percent of the quota of surf clams established under § 652.21(d) for the Nantucket Shoals Area has been caught, the Regional Director will, after review of available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Secretary may reduce the number of days per weeks, or establish authorized periods, during which fishing for surf clams is allowed.

(h) *Surf clams: Georges Bank Area*—(1) *The fishing week.* Fishing for surf clams will be allowed seven days per week. The fishing week begins at 0001 hours Sunday and ends at 2400 hours Saturday, local time.

(2) *Management measure adjustments.* If the Regional Director determines, based on logbook reports, processor's reports, vessel inspections, or other information, that the quarterly allocation for surf clams will be exceeded, the Secretary will publish a notice in the FEDERAL REGISTER stating the determination and stating a date and time for closure of the fishery.

* * * * *

§ 652.23 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Secretary determines that the adverse environmental conditions have been corrected. If additional areas, due to the presence or introduction of hazardous materials or pollutants, are identified as being contaminated, they may be closed by notice published by the Secretary, after a public hearing is held to discuss and assess the effects of such a closure. The areas currently closed are described as follows:

(1) *Boston Foul Ground.* A waste disposal site known as the "Boston Foul Ground" and located at 42°25′36″ N. latitude and 70°35′00″ W. longitude with a radius of one nautical mile in every direction from that point.

(2) *New York Bight.* A polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25′04″ N. latitude and 73°42′38″ W. longitude and with a radius of six nautical miles in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. latitude and 73°43′38″ W. longitude directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and a line from a point on the arc at 40°19′48″ N. latitude and 73°45′42″ W. longitude to a point at the limt of the state territorial waters of New Jersey at 40°14′00″ N. latitude and 73°55′42″ W. longitude.

(3) *106 Dumpsite.* A toxic industrial dump site known as the "106 Dumpsite" and located between 38°40′00″ N. latitude, and 39°00′00″ N. latitude and between 72°00′00″ W. longitude and 72°30′00″ W. longitude.

(b) *Areas closed because of small surf clams.* Certain areas are closed because they contain small surf clams.

(1) *Closure.* The Secretary may close an area to surf clam and ocean quahog fishing if he determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) 60 percent or more are smaller than 4½ inches in size, and;

(ii) Not more than 15 percent are larger than 5½ inches in size. (Sizes are measured at the longest dimension of the surf clam.)

(2) *Reopening.* The Secretary may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is 5½ inches or more; or

(ii) The yield or rate of growth of the dominant size class in the area to be reopened would be significantly enhanced through selective, controlled or limited harvest of surf clams in the area.

(3) *Control of reopened areas.* The Secretary will control the harvest of surf clams from reopened areas separate from the management of the general fishery until the catch per unit of effort in the reopened area is comparable to the average catch per unit of effort in the general fishery, at which time the reopened area will become part of the general fishery. Any of the following mechanisms may be used to control harvests from the reopened areas:

(i) The Regional Director may request that vessel operators announce their intent to fish within reopened areas.

(ii) The Regional Director may, based on reference to survey information, select an appropriate range of allowable fishing time for the reopened area to achieve parity with fishing practices in the general fishery. The range will be published for notice and comment subject to the procedures established in paragraph (c) of this section. The Regional Director may subsequently adjust fishing time within the range, based on logbook information, to maintain parity with the general fishery. These adjustments while published by notice in accordance with paragraph (c) of this section.

(iii) The Regional Director may set a schedule for vessels to operate in reopened areas if he determines that the number of vessels planning to operate simultaneously in a reopened area exceeds the number which can safely be accommodated in the area, or which can effectively be monitored by enforcement officers.

(iv) If the Regional Director determines, based on resource survey information, that the yield of surf clams in a reopened area will be enhanced by selective thinning of the surf clam population in the area, he may temporarily suspend the surf clam size limit in that area. Areas of this type will be identified and defined in accordance with the notice and comment procedures established in paragraph (c) of this section.

(c) *Procedure.* The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Secretary will publish notice of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments and publish the final notice of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area will be made by FEDERAL REGISTER notice. The Regional Director will send notice of any action under this paragraph to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(d) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel, or the presence of any part of the vessel's gear in the water, in closed areas is prima facie evidence that such clams or quahogs were taken in violation of these regulations.

[47 FR 4270, Jan. 29, 1982, as amended at 49 FR 11842, Mar. 28, 1984]

§ 652.24 Vessel moratorium.

The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, shall remain in effect in the Mid-Atlantic Area until replaced by a revised limited-entry system.

§ 652.25 Size restrictions.

(a) *Minimum length.* A minimum size limit for surf clams of 5½ inches in length is imposed in all three areas of the fishery with the following exceptions:

(1) *Size limit selections.* The Regional Director will select the size limit, after consultation with the Council, from among the following values: 5½, 5¼, 5, and 4¾ inches. The size limit will be selected to reduce discards of surf clams to less than 30 percent, on average, of trip catches. The Regional Director will monitor current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource in determining if any adjustment in the size limit is appropriate. The Secretary will publish notice of any adjustments in the FEDERAL REGISTER. The public may comment on the minimum size adjustment for 15 days after the date of publication. After consideration of public comments, the Secretary may publish notice in the FEDERAL REGISTER of any changes in the adjusted minimum size limit.

(2) *Tolerance.* (i) When the minimum size limit is greater than 4¾ inches, as many as 240 surf clams in any full cage may be less than the legal minimum size, but no more than 50 clams in any full cage may be less than 4¾ inches.

(ii) When the minimum size limit is 4¾ inches, no more than 50 clams in any full cage may be less than 4¾ inches.

(iii) If any inspected cage is found to be in violation of paragraphs (2) (i) through (ii) of this section, all cages in possession landed by the same vessel from the same trip will be deemed in violation of the size limit.

(b) *Measurement.* Length is measured at the longest dimension of the surf clam.

[50 FR 11169, Mar. 20, 1985, as amended at 50 FR 32711, Aug. 14, 1985]

EFFECTIVE DATE NOTE: At 50 FR 23017, May 30, 1985, an emergency interim rule was issued amending § 652.25, by adding paragraph (c), effective from May 24, 1985 until August 21, 1985. At 50 FR 34154, Aug. 23, 1985, the effective date was extended through November 18, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 652.25 Size restrictions.

* * * * *

(c) *Clarification.* Paragraphs (a) (1) and (2) and (b) of this section include the Nantucket Shoals Area and the Georges Bank Area.

EDITORIAL NOTE: At 50 FR 14930, Apr. 16, 1985, effective April 12, 1985, NOAA issued a notice to continue the minimum size limit of 5¼ inches in all areas of the surf clam fishery.

This size limit was implemented by an emergency interim rule at 49 FR 40580, Oct. 17, 1984, effective October 14, 1984 through January 12, 1985, and extended to April 12, 1985, at 50 FR 2292, Jan. 16, 1985.

PART 654—STONE CRAB FISHERY

Subpart A—General Measures

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654.2 Definitions.
654.3 Relation to other laws.
654.4 Markings.
654.5 Record keeping and reporting requirements.
654.6 Restrictions.
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654.24 Zone modification procedures.
654.25 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*.

SOURCE: 44 FR 53527, Sept. 14, 1979, unless otherwise noted.

Subpart A—General Measures

§ 654.1 Purpose and scope.

The regulations in this part govern fishing for stone crabs by fishing vessels of the United States within that portion of the Gulf of Mexico along the west coast of Florida, including the Keys, in which the United States exercises exclusive fishery management authority under the Act. The regulations also affect vessels of the United States in the trawl fishery in that area.

§ 654.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meaning. (Some definitions in the Act have been repeated here to aid understanding of the regulations.)

Act means the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 through 1882).

Authorized Officer means:

(1) Any commissioned, warrant or petty officer of the United States Coast Guard;

(2) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Biodegradable Panel means a panel constructed of wood or cotton material and located on the trap, at least two slats above the bottom, or on the top of the trap, which, when removed, will leave an opening in the trap measuring at least 2½" x 5".

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 95 Virginia Beach Drive, Miami, Florida 33149. Telephone (305) 361-5761.

Committee means Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee or any successor committee designated as such by the Staff of Florida.

Council means the Gulf of Mexico Fishery Management Council, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

FDNR means the Florida Department of Natural Resources.

Fishery Conservation Zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the United States is measured.

Fishing means any activity, other than scientific research conducted by a vessel, which involves:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraph (1), (2), or (3) of this definition.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

FMFC means the Florida Marine Fisheries Commission.

FMP means the Fishery Management Plan for Stone Crab Fishery.

Live box means a container used for holding live stone crabs on board a vessel.

Management area means that area of the FCZ adjacent to the territorial sea off the west coast of Florida and off the south side of the Florida Keys.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time or voyage; or

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the designation, function or operation of the vessel; and

(4) Any agent designated as such by any person described in paragraph (1), (2) or (3) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Southeast Regin, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Secretary means the Secretary of Commerce, or a designee.

State means the State of Florida.

Stone Crabs means *Menippe mercenaria.*

Vessel of the United States means:

(1) A vessel documented or numbered by the Coast Guard under United States law; or

(2) A vessel which is registered under the laws of any State.

United States harvested fish means fish caught, taken or harvested by vessels of the United States within any foreign or domestic fishery regulated under the Act.

[44 FR 53527, Sept. 14, 1979, as amended at 47 FR 3795, Jan. 27, 1982; 47 FR 41757, Sept. 22, 1982; 49 FR 30715, Aug. 1, 1984]

§ 654.3 Relation to other laws.

(a) *Federal.* The regulations in this part are intended to be compatible with, and do not supersede similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(b) *State.* The regulations in this part are intended to be compatible with similar regulations and statutes in effect in the State of Florida. Responsibilities relating to the issuance of numbers and colors, data collection, and enforcement may be performed by personnel of the State of Florida under agreement with the National Oceanic and Atmospheric Administration and the U.S. Coast Guard.

§ 654.4 Markings.

(a) *General.* No vessel other than a vessel of the United States which is properly registered, documented or numbered may fish for stone crabs in the management area.

(b) *Markings.* (1) Buoys and traps shall bear the number and color that correspond with their Florida stone crab permit number and color or their Federal number and color.

(2) Each vessel fishing for stone crabs in the management area shall be marked by its appropriate documentation, registration or number and shall be marked by the appropriate stone crab number and color.

(3) All markings shall be permanent. Vessel markings shall be of a size and location so as to be visible from the air. Buoy and trap markings shall be of such size and color so as to permit ready identification of the gear.

(c) *Application to the Regional Director.* (1) Persons who cannot obtain a Florida stone crab permit may apply to the Regional Director, who shall assign a Federal number and color to the vessel and its gear.

(2) Each application shall contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number or State license number; and

(iv) The vessel's radio call sign.

(d) *Fees.* No fee is required for a number and color issued by the Regional Director under this part.

(The information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 0648-0097)

[44 FR 53527, Sept. 14, 1979, as amended at 48 FR 34762, Aug. 1, 1983]

§ 654.5 Record keeping and reporting requirements.

(a) *Owners and operators.* The owner or operator of any vessel that fishes for stone crabs or any vessel that lands stone crabs or any portion thereof, and who is selected to report, shall report the information required by this paragraph to the Center Director each month on forms obtained from the Center Director. Reports shall contain the following information for each day's catch:

(1) The date of the catch;

(2) The gear identification (number and color) and the vessel name and number;

(3) The number of pounds of stone crab claws fished by zone (Zone 1—territorial sea; Zone 2—the FCZ shoreward of eight fathoms; Zone 3—the FCZ seaward of eight fathoms);

(4) The number of traps being fished per zone per month;

(5) The number of traps pulled per zone per day; and

(6) The name and address of the purchaser.

(b) *Dealers and processors.* Any person who receives stone crab claws by way of purchase, barter, trade, or sale from a fishing vessel subject to this part, and who is selected to report, shall file a monthly report with the Center Director on forms obtained from the Center Director, which will contain the following information:

(1) The date the stone crab claws were received;

(2) The name and mailing address of the person receiving the stone crab claws;

(3) The name of the vessel;

(4) The weight in pounds of stone crab claws received by size class (large, medium and small);

(5) The ex-vessel value of stone crab claws purchased or handled monthly;

(6) The amount by weight of stone crab processed monthly; and

(7) The disposition of the stone crab claws processed or received.

(c) *Filing.* Reports under this section shall be filed on a form obtained from the Center Director, within ten days after the end of each month in which the stone crab claws were landed, received, or harvested.

(The information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 0648-0016, and paragraph (b) was approved under control number 0648-0013)

[44 FR 53527, Sept. 14, 1979, as amended at 47 FR 41757, Sept. 22, 1982; 48 FR 34762, Aug. 1, 1983]

§ 654.6 Restrictions.

(a) It is unlawful for any person:

(1) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land or export any

stone crabs taken in violation of the Act, this part, or any other regulation promulgated under the Act;

(2) To refuse to permit an Authorized Officer to board a fishing vessel subject to the person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(3) Forcibly to assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (a)(2) of this section;

(4) To resist a lawful arrest for any act prohibited by this part;

(5) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(6) To falsify or fail to submit any reports required by § 654.5; and

(7) To violate any other provisions of this part, the Act, or any regulation issued under the Act.

(b) It is unlawful for any vessel of the United States or for any owner or operator of any vessel of the United States to transfer directly or indirectly or attempt to so transfer any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under this Act.

§ 654.7 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-)[1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 654.8 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Editorial Note: Section 654.8 was incorrectly identified as § 654.9 at 50 FR 39696, Sept. 30, 1985.

Subpart B—Management Measures

§ 654.20 Catch limitations.

(a) *Claw Size.* No person shall remove a stone crab claw with a propodus measuring less than 2¾ inches from the body of a stone crab. Stone crab claws are measured in a straight line from the elbow to the tip of the lower immovable finger (see Figure 2). The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended.

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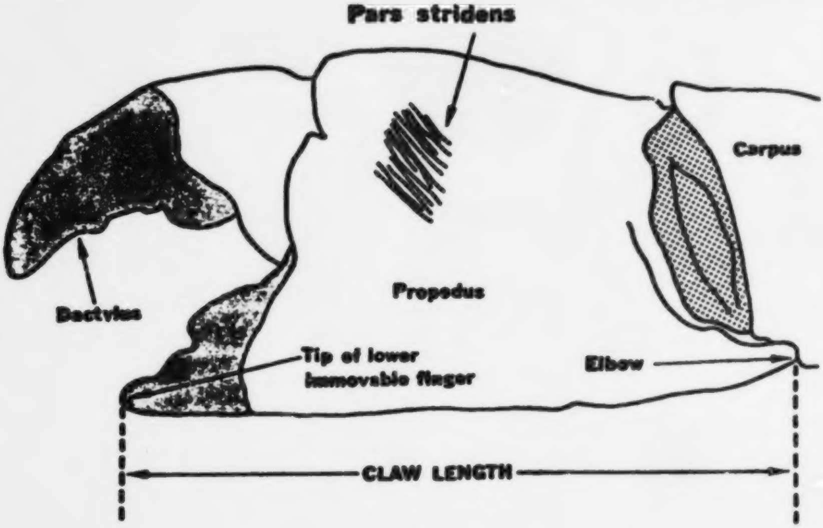
[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.



(FIGURE 2)

(b) *Holding crabs aboard fishing vessels.* Stone crab bodies from which claws have been severed or removed must be returned to the water before the vessel leaves the fishery conservation zone. Stone crabs may be held in live boxes prior to the severing or removing the claws from the body, provided that the stone crabs are shaded from direct sunlight.

(c) *Traps.* No fisherman shall willfully tend, open, pull or otherwise molest another fisherman's traps without the prior written consent of that fisherman. (The buoy and corresponding lines are part of the trap for purposes of section.)

(d) *Time of day.* No fisherman shall tend, open, pull, or otherwise molest traps during the period beginning one hour after sunset to one hour before sunrise.

§ 654.21 Gear requirements.

Traps used in the stone crab fishery must have a biodegradable panel. (See definition in § 654.2.)

§ 654.22 Closed season.

(a) No person shall possess stone crabs or any parts thereof in the fishery conservation zone during the period commencing on 0001 hours May 16 and terminating on 2400 hours October 14. Baited traps may be placed in the water on or after 0001 hours October 5 and fishermen may remove traps until 2400 hours May 20. Holding stone crabs in traps during the period 0001 hours October 5 to 2400 hours October 14 shall not be deemed possession, provided that the stone crabs are not fished until 0001 hours October 15. Holding stone crabs in traps during the period 0001 May 16 through 2400 hours May 20 shall not be deemed possession, provided that the stone crabs are not fished after 2400 hours May 15 and the stone crabs are returned immediately to the water when the traps are removed. No traps shall be in the water during the period commencing on 0001 hours May 21 and terminating on 2400 hours October 4.

(b) Stone crab traps in the management area from 0001 hours May 21 to 2400 hours October 4 will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an Authorized Officer. Owners of these stone crab traps remain subject to appropriate civil penalties.

[44 FR 53528, Sept. 14, 1979, as amended at 47 FR 41756, Sept. 22, 1982]

§ 654.23 Area restrictions.

(a) Between January 1 and one hour after sunset (local time) May 20, it is unlawful to use trawl gear in that part of the FCZ (Figure 1) shoreward of a rhumb line connecting in order points B at 26°16.0′ N. latitude and 81°58.5′ W. longitude, C at 26°00.0′ N. latitude and 82°04.0′ W. longitude, D at 25°09.0′ N. latitude and 81°47.6′ W. longitude, E at 24°54.5′ N. latitude and 81°50.5′ W. longitude, and to the intersection of the seaward boundary of the State of Florida and a line extending from E to Point F at 24°41.9′ N. latitude and 81°40.5′ W. longitude (Snipe Point).

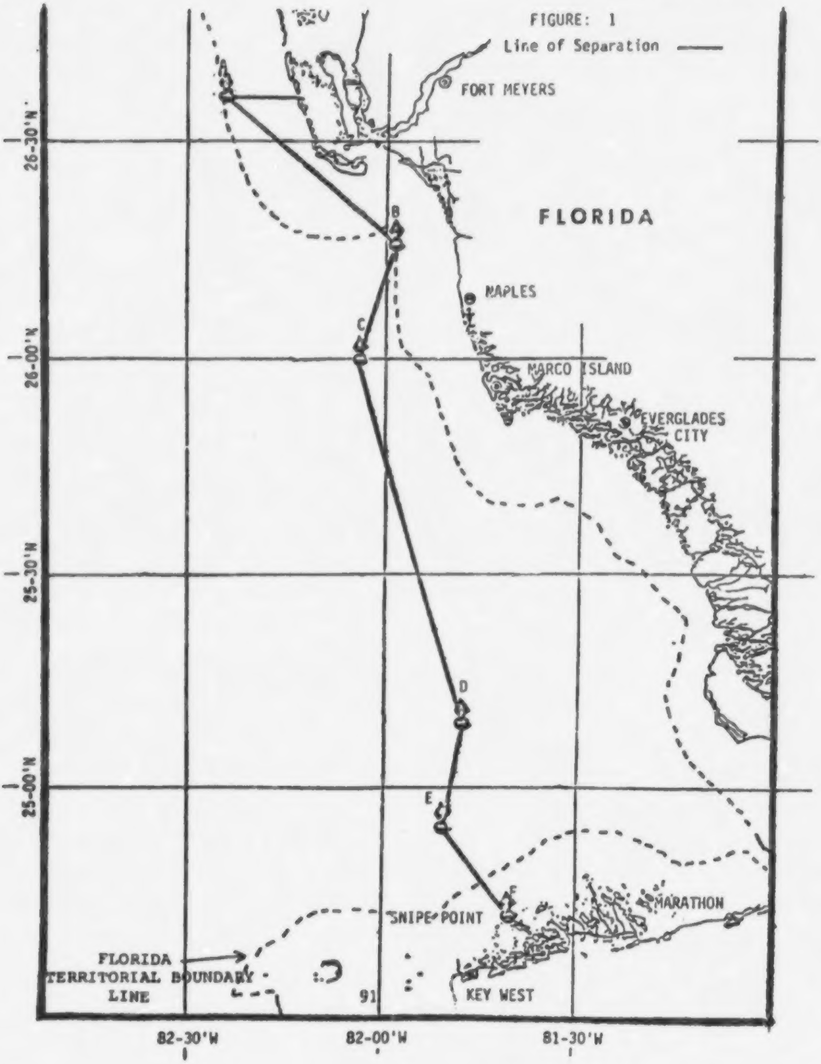


FIGURE: 1
Line of Separation
FORT MEYERS
FLORIDA
NAPLES
MARCO ISLAND
EVERGLADES CITY
MARATHON
SNIPE POINT
KEY WEST
FLORIDA TERRITORIAL BOUNDARY LINE
91
B
C
D
E
F
26-30'N
26-00'N
25-30'N
25-00'N
82-30'W
82-00'W
81-30'W

(b)(1)(i) No person may place stone crab traps in that part of the FCZ identified as Zone IV (Figure 3) during the period 0001 hours October 5 to 2400 hours December 1 and during the period 0001 hours April 2 to 2400 hours May 20. Zone IV is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial, and are included only for the convenience of fishermen):

ZONE IV

Point	Latitude	Longitude	LORAN chain 7980		
			X	Y	Z
V	28°41'39" N	82°54'08" W	31303.0	45183.1	62961.5
E	28°41'39" N	82°55'18" W	31301.0	45193.1	62970.0
O	28°30'51" N	82°55'06" W	31242.7	45104.3	62970.0
S	28°30'51" N	82°52'5[illegible]" W	31247.6	45086.8	62955.0
Z	28°37'44" N	82°53'02" W	31284.3	45143.0	62955.0

Thence northerly along the State boundary to point V

(ii) No person may place stone crab traps in that part of the FCZ identified as Zone V (Figure 3) during the period 0001 hours October 5 to 2400 hours November 30 and during the period 0001 hours March 16 to 2400 hours May 20. Zone V is bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of fishermen):

ZONE V

Point	Latitude	Longitude	LORAN chain 7980		
			X	Y	Z
W	28°49'25" N	82°55'49" W	31341.2	45260.0	62971.2
G	28°48'55" N	82°56'19" W	31337.8	45260.0	62975.0
F	28°41'39" N	82°56'06" W	31299.2	45199.1	62975.0
V	28°41'39" N	82°54'08" W	31303.00	45183.1	62961.5

Thence northerly along the State boundary to point W.

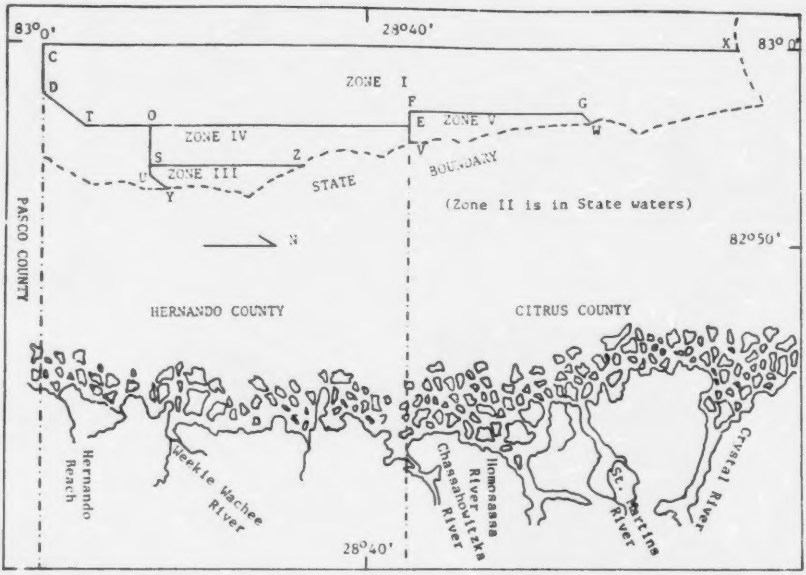

83°0'
28°40'
83°0'
C
D
T
O
ZONE I
F
E
ZONE V
G
X
W
ZONE IV
S
Z
V
U
ZONE III
Y
STATE
BOUNDARY
(Zone II is in State waters)
N
82°50'
PASCO COUNTY
HERNANDO COUNTY
CITRUS COUNTY
Hernando Beach
Weekie Wachee River
Chassahowitzka River
Homosassa River
St. Martins River
Crystal River
28°40'

Figure 3 Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative purposes only).

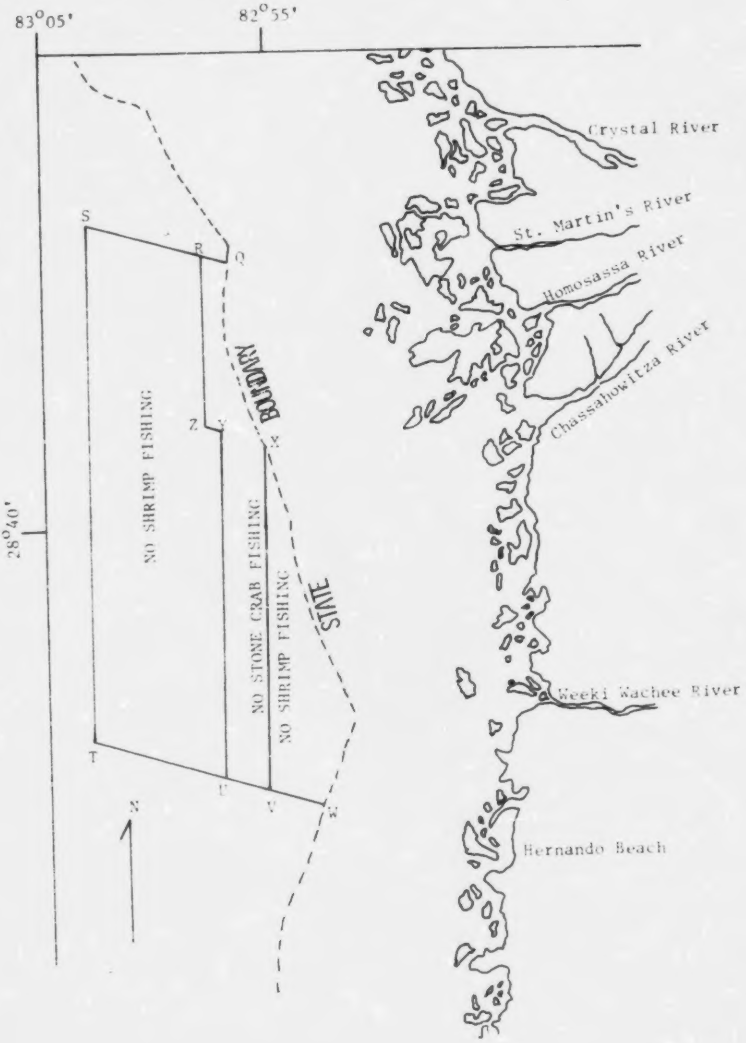

83°05'
82°55'
28°40'
Crystal River
St. Martin's River
Homosassa River
Chassahowitza River
Weeki Wachee River
Hernando Beach
S
R
Q
Z
Y
X
T
U
V
W
N
NO SHRIMP FISHING
NO STONE CRAB FISHING
NO SHRIMP FISHING
STATE
BOUNDARY

Figure 3. Chart delineating areas closed to fishing for shrimp or stone crab (not to scale, for illustrative purposes only).

(2) No person may place into the management area any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of others, to utilize willfully fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(3) Stone crab traps found in the area described in paragraph (b)(1) of this section during the closed period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. Owners of these stone crab traps are subject to civil penalties. All stone crab traps fished in the FCZ will be presumed to be the property of the most recently documented owner.

[47 FR 41758, Sept. 22, 1982, as amended at 49 FR 30715, Aug. 1, 1984; 49 FR 39163, Oct. 4, 1984; 50 FR 25713, June 21, 1985]

§ 654.24 Zone modification procedures.

(a) *Procedure for modifying existing restricted fishing areas for stone crab fishermen in the FCZ* (inshore of 83.0° W. longitude) *off Pasco, Hernando, and Citrus Counties, Florida, by notice.* (1) The Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee (Committee) may propose modifications to the exclusive fishing areas for shrimping and for crabbing provided by § 654.23 to resolve any conflict in both State waters and the FCZ inshore of 83.0° W. longitude, at its public meetings. Such a zoning proposal for fishing areas may be initiated at any time by the Committee in response to changing conditions in the fishery and may include zoning configurations that fluctuate or change on specific dates to allow for optimum production by the user groups affected.

(2) The Committee will submit the zoning proposal to the State regulatory agencies, Florida Department of Natural Resources (FDNR) and Florida Marine Fisheries Commission (FMFC), for implementation in State waters and may submit the proposal to the Council for initial review and comment.

(3) After the State has accepted the proposal for promulgation as a rule, the State may request that the Council adopt that portion of the zoning proposal relating to the FCZ. The Council will review the proposal and administrative record developed by the State in support of its proposed rule and will recommend to the Regional Director that the proposal be implemented (or not implemented) or implemented with minor modifications in the FCZ. If the Council or Regional Director determine that the opportunity for public comment through the State system was inadequate, they may hold public hearings on the zoning proposal affecting the FCZ. The Council may also avail itself of the advice and counsel of its Scientific and Statistical Committee, Shrimp and Stone Crab Advisory Panels, or an Ad Hoc Advisory Panel consisting of persons fishing the Federal waters, in the review of the proposal or to propose zoning modifications. Should the Council recommend that the Federal portion of the proposal not be implemented or be modified, it will immediately notify the State and specify its reasons for such action.

(4) If the Secretary, after receiving the recommendations of the Council, concludes that such recommendations are consistent with the objectives of the FMPs, the Magnuson Act, or other applicable law, the Secretary will implement them by notice in the FEDERAL REGISTER. If the Regional Director determines that the recommended action of the Council should not be implemented, the Regional Director will immediately notify the Council and State of his reasons and may suggest an alterative to the recommended action. The Council, after conferring with the State, will immediately advise the Regional Director as to the acceptability of the alternative.

(5) In the event that the Committee fails to act or is unable to develop a compromise solution for fishing in the area, or if the Committee is abolished or otherwise becomes nonfunctional, the Council will call upon the FMFC to provide the recommendations under paragraphs (a)(1) and (2) of this section. The Council may then utilize its own Ad Hoc Advisory Panel consisting

of fishermen from the area affected to advise the Council on the acceptability of these recommendations or to propose zoning modifications.

(6) If the Committee is enlarged or restructured to have authority over zoning for other counties, the restructured committee may provide recommendations under paragraphs (a)(1) and (2) of this section and the Secretary may implement such recommendations under paragraph (a)(4) of this section.

(7)(i) The Secretary may, with the concurrence of the Council, modify existing zoning by publishing a notice in the FEDERAL REGISTER if the Regional Director determines that the procedures in paragraphs (a)(1) through (5) of this section cannot be followed in time to prevent inequitable access to the resources.

(ii) The Secretary will invite public comment prior to the effective date of the notice. If the Secretary determines, for good cause, that a notice must be promulgated immediately, comments will be received for 15 days after the effective date of the notice.

(iii) As soon as practicable after the end of the comment period, the Secretary will either rescind, modify or allow the modification to the existing zoning to remain unchanged through notice in the FEDERAL REGISTER.

(8)(i) In the event that the Regional Director determines that the procedural paragraphs (a)(1) through (5) of this section cannot be followed in time to resolve or prevent serious conflict the Secretary may, with the concurrence of the Council, publish a notice in the FEDERAL REGISTER to:

(A) Close the area or a portion thereof to stone crab fishing for a period not to exceed 30 days; and/or

(B) Modify the configuration of the existing boundaries of the fishing areas as specified in the rule in the FCZ for part of or for the duration of the stone crab season and close the fisheries in the areas affected for 10 days to allow movement of crab traps into the crabbing areas specified in the rule.

(ii) Not later than 72 hours after the effective date of the modification to the regulation under paragraph (b)(1) of this section, the Regional Director will conduct a public fact-finding hearing. Notice of such hearing will be provided to the following:

(A) The Chairman of the council or his designee;

(B) The Director of the FDNR or his designee;

(C) The Chairman of the FMFC or his designee;

(D) Local news media as may be appropriate;

(E) Such user group representatives or organizations as may be appropriate and practicable; and

(F) Others deemed appropriate by the Regional Director.

(iii) The fact-finding hearing will be for the purpose of evaluating the following:

(A) The existence and seriousness of the conflict needing resolution by the modification to the existing rule;

(B) The appropriate duration of the modification to the existing rule;

(C) Other solutions to the conflict; and

(D) Other relevant matters.

(iv) The Secretary, within ten days after conclusion of the factfinding hearing will either rescind, modify or allow the modification to the existing rule to remain unchanged through notice in the FEDERAL REGISTER.

(b) The Secretary, in consultation with or based on recommendations by the Council, may by regulatory amendment, take such action as may be necessary and appropriate to resolve any conflict in the area off Pasco, Hernando and Citrus Counties, Florida (inshore of 83.0° W. longitude) or any other part of the FCZ, provided such action is taken in a manner which to the maximum extent practicable is consistent with action recommended by or taken by the adjacent coastal State.

(c) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

[49 FR 30716, Aug. 1, 1984]

§ 654.25 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[47 FR 3795, Jan. 27, 1982. Redesignated at 49 FR 30716, Aug. 1, 1984]

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Subpart A—General Provisions

Sec.

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655.2 Definitions.
655.3 Relation to other laws.
655.4 Vessel permits.
655.5 Recordkeeping and reporting requirements. [Reserved]
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655.21 Allowable levels of harvest.
655.22 Procedures for determining initial annual amounts and adjustments.
655.23 Reserve releases.
655.24 Closure of the fishery.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 14556, Apr. 4, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this part govern fishing for Atlantic mackerel, *Illex, Loligo,* and butterfish by fishing vessels of the United States in the fishery conservation zone off the coasts of the Atlantic States.

(b) The regulations governing fishing for Atlantic mackerel, *Illex, Loligo,* and butterfish by vessels other than vessels of the United States are contained in 50 CFR Part 611.

(c) This part implements the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean.

§ 655.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings:

Area of custody means any vessel, building, vehicle, pier, or dock facility where Atlantic mackerel, squid, or butterfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, or the individual to whom appropriate authority has been delegated.

Atlantic butterfish or *butterfish* means the species *Peprilus triacanthus.*

Atlantic mackerel or *mackerel* means the species *Scomber scombrus.*

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying, and acting under the direction of, any person described in paragraph (a) of this definition.

Catch, take, or *harvest* includes, but is not limited to, any activity which results in the killing of any Atlantic mackerel, squid, or butterfish, or bringing any Atlantic mackerel, squid, or butterfish on board a vessel.

Charter or *party boat* means any vessel which carries passengers for hire to engage in fishing.

Fish includes Atlantic mackerel (*Scomber scombrus*), squid (*Loligo pealei* and *Illex illecebrosus*), and Atlantic butterfish (*Peprilus triacanthus*).

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline used to measure the territorial sea.

Fishery management plan (FMP) means the Fishery Management Plans for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the Northwest Atlantic Ocean, as consolidated by amendment 3 and revised by subsequent amendments.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing trip or trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Illex means the species *Illex illecebrosus* (short-finned or summer squid).

Joint venture harvest means U.S.-harvested Atlantic mackerel, squid, or butterfish transferred to foreign vessels in the FCZ or in the internal waters of a State. Transfers to foreign vessels in the internal waters of a State are governed under section 306(c) of the Magnuson Act.

Loligo means the species *Loligo pealei* (long-finned or bone squid).

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Metric ton (mt) means 1,000 kilograms, or 2,204.6 pounds.

Official number means the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm St., Federal Building, Gloucester, MA, or a designee.

Secretary means the Secretary of Commerce, or a designee.

Squid means *Loligo pealei* and *Illex illecebrosus.*

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) Any vessel under five net tons which is registered under the laws of any State.

Vessel length means that length set forth in U.S. Coast Guard or State records.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983; 48 FR 45404, Oct. 5, 1983; 49 FR 406, 407, Jan. 4, 1984]

EFFECTIVE DATE NOTE: At 48 FR 44839, Sept. 30, 1983, § 655.2 was amended by revising the title of the definition "*Operator*" to read "*Owner*" and the title of the definition "*Fishing trip*" to read "*Fishing trip or trip*", and by adding the definitions for "*Fish*" and "*Operator*". At 49 FR 406, and 407, Jan. 4, 1984, the definitions of "*Fishery management plan*" and "*Joint venture harvest*" were revised. These changes and revisions are effective through March 31, 1986.

§ 655.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited under 15 CFR Part 924 in the U.S.S. *Monitor* Marine Sanctuary, which is located approximately 15 miles off the coast of North Carolina (35°00′23″ N. latitude, 75°24′32″ W. longitude).

(c) Fishing vessel operators shall exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that fishing operations may not be conducted at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable, or at a distance of less than one quarter nautical mile from a buoy intended to mark the position of a cable when being laid, or when out of order, or broken.

(d) Vessels fishing within the Large Mesh Area (47 FR 43705, October 4, 1982) for Atlantic mackerel, squid, and butterfish with cod-end mesh size of less than five and one-half inches must apply to fish under the optional settlement program under the interim groundfish regulations at 50 CFR 651.22 (47 FR 43705, October 4, 1982).

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983]

EFFECTIVE DATE NOTE: At 48 FR 44839, Sept. 30, 1983, § 655.3 was amended by adding paragraphs (c) and (d). Paragraphs (c) and (d) remain in effect through March 31, 1986.

§ 655.4 Vessel permits.

(a) *General.* Any vessel of the United States which catches 100 pounds or more each of Atlantic mackerel, *Illex*, *Loligo*, or butterfish per trip must have a permit issued under this section.

(b) *Application.* (1) An application for a permit under this part must be submitted to the Regional Director and signed by the owner or operator of the vessel, on an appropriate form obtained from the Regional Director, at least 30 days before the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the U.S. Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and the year the vessel was built;

(vi) The type of construction, type of propulsion, and the type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishing permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a range; and

(xi) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (b)(2) of this section must be reported by the applicant in writing to the Regional Director within 15 days of the change.

(c) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(d) *Expiration.* A permit will expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Alteration.* Any permit which has been altered, erased, or multilated is invalid.

(g) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the fishing vessel and owner for which it is issued.

(i) *Display.* Any permit issued under this part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request by any Authorized Officer.

(j) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(k) *Fees.* No fee is required for any permit issued under this part.

(The information collection requirements in paragraph (b)(2) were approved by the Office of Management and Budget under control number 0648-0097)

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983; 49 FR 1043, Jan. 6, 1984; 49 FR 41063, Oct. 19, 1984]

EFFECTIVE DATE NOTE: At 48 FR 44839, Sept. 30, 1983, § 655.4 was amended by revising paragraph (a). Paragraph (a) remains in effect through March 31, 1986.

§ 655.5 Recordkeeping and reporting requirements. [Reserved]

§ 655.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must contrast with the background and be in block Arabic numerals at least 18 inches in height for vessels equal to or over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length.

(c) The official number must be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the official number whenever the vessel is fishing for Atlantic mackerel, squid, or butterfish.

(d) *Duties of operator.* The operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983]

EFFECTIVE DATE NOTE: At 48 FR 44839, Sept. 30, 1983, § 655.6 was amended by revising paragraph (b). Paragraph (b) remains in effect through March 31, 1986.

§ 655.7 General prohibitions.

It is unlawful for any person:

(a) To possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import, or export any Atlantic mackerel, squid, or butterfish taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(b) To refuse to allow an authorized officer to board a fishing vessel or to enter an area of custody subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part, or any other regulation or permit under the Magnuson Act;

(c) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (b) of this section;

(d) To make any false statement, written or oral, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any mackerel, squid, or butterfish.

(e) To resist a lawful arrest for any act prohibited by this part;

(f) To interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by this part;

(g) To interfere with, obstruct, delay, or prevent by any means the lawful investigation or search conducted in the process of enforcing this part;

(h) To transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel within the FCZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(i) To use any vessel for taking, catching, harvesting, or landing of any Altantic mackerel, squid, or butterfish (except as provided in § 655.4 (a)) unless the vessel has on board a valid permit issued under § 655.4;

(j) To fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel, as specified in § 655.4(b);

(k) To falsify or fail to affix and maintain vessel markings as required by § 655.6;

(l) To fail to comply immediately with enforcement and boarding procedures specified in § 655.8;

(m) To take and retain, or land more Atlantic mackerel, squid, or butterfish than specified under a notice issued under § 655.24;

(n) To violate any other provision of this part, the Magnuson Act, any notice issued under Subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983]

EFFECTIVE DATE NOTE: At 48 FR 44839, Sept. 30, 1983, § 655.7 was amended by redesignating paragraphs (d) through (m) as paragraphs (e) through (n) and adding a new paragraph (d). Paragraph (d) remains in effect through March 31, 1986.

§ 655.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide

a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-)[1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 655.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year is the 12-month period beginning April 1, and ending on March 31 of the following year.

§ 655.21 Allowable levels of harvest.

(a) *Maximum optimum yields.* (1) The optimum yields (OYs) during a fishing year may not exceed the following amounts:

Illex	30,000 mt.
Loligo	44,000 mt.
Butterfish	16,000 mt.

(2) For Atlantic mackerel, the OY may not exceed 30,000 mt if the spawning stock at the end of the upcoming year is estimated, under the procedures specified in the FMP, to be less than or equal to 400,000 mt. If the spawning stock at the end of the upcoming year is estimated to exceed 400,000 mt, the maximum OY is determined in accordance with paragraph (b)(2)(ii) of this section.

(b) *Annual specifications.* Total allowable biological catch (ABC), initial optimum yield (IOY), and amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for each species will be determined annually by the Regional Director, in consultation with the Mid-Atlantic Fishery Management Council (Council) under the procedures specified in § 655.22, consistent with the following:

(1) *Squid.* (i) Total allowable biological catch (ABC) for any fishing year is either the maximum OY specified in paragraph (a)(1) of this section, or a lower amount determined by the Regional Director, in consultation with the Council, if stock assessments or other ecological data indicate that the potential yield is less than the maximum OY level.

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

(ii) The IOY consists of an initial DAH and initial TALFF and represents a modification of ABC, based on economic factors. These factors must include the following:

(A) Total world export potential by squid-producing countries;

(B) Total world import demand by squid-consuming countries;

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(D) Increased or decreased revenues to the U.S. from foreign fishing fees;

(E) Increased or decreased revenues to U.S. harvesters (with or without joint ventures);

(F) Increased or decreased revenues to U.S. processors and exporters;

(G) Increases or decreases in U.S. harvesting productivity due to decrease or increase in foreign harvest;

(H) Increases or decreases in U.S. processing productivity; and

(I) Potential impact of increased or decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(iii) The DAH, DAP and JVP must be based on data from sources specified in § 655.22(e) and other relevant data including past domestic landings, the capacity and intent of U.S. processors to process U.S.-harvested squid, and projected amounts of squid necessary for joint ventures during the fishing year.

(iv) IOY must be set at a level that will produce the greatest overall net benefit to the United States. In determining this amount, the Regional Director, in consultation with the Council, will provide for a TALFF of at least a minimum incidental catch in other directed fisheries. TALFF may be greater than an incidental catch level, if the IOY determined to produce the greatest overall benefit to the United States is sufficiently greater than DAH.

(A) *Loligo*. The incidental catch level is one percent of the allocated portion of *Illex*, mackerel (if a directed fishery is allowed), silver hake, and red hake TALFFs.

(B) *Illex*. The incidental catch level is ten percent of the allocated portion of *Loligo*, and one percent of the allocated portion of mackerel (if a directed fishery is allowed), silver hake, and red hake TALFFs.

(v) The IOY may be adjusted by the Regional Director, in consultation with the Council, at any time during the fishing year, under § 655.22(f). The basis for any adjustment may be that new information or changed circumstances indicate that U.S. fishermen will exceed the initial DAH, or that the IOY should be increased to produce maximum net benefits to the United States based upon an application of the factors above. The IOY may be increased by the amount that DAH or TALFF, or both, are increased, but IOY may not exceed ABC. An adjustment to IOY may not result in TALFF being reduced to a quantity less than that allocated to and accepted by foreign nations or to a quantity less than the incidental catch levels specified in paragraph (b) of this section.

(2) *Atlantic mackerel.* In all cases, initial DAP is the estimated amount of initial DAH that domestic processors will process. In estimating the DAH in the cases set forth below, the recreational catch will be predicted by the formula: $Y=(0.01)(X)+(180)$, where "X" is equal to the current spawning stock size, and "Y" is the estimated recreational catch in metric tons. Terms used in specifying mackerel OY, DAH, DAP, and TALFF are:

C = Estimated mackerel catch in Canadian waters for the upcoming fishing year
US = Estimated U.S. mackerel catch for the upcoming year
S = Mackerel spawning-stock size in the year after the upcoming fishing year
Bycatch = 2% of allocated portion of the silver hake TALFF and 1% of the allocated portions of the *Loligo*, *Illex*, and red hake TALFFs
AC = Acceptable catch in U.S. waters for the upcoming fishing year
T = Total catch in all waters (U.S. and Canadian) for the upcoming fishing year.

(i) *Case 1.* If the spawning stock size at the end of the upcoming fishing year, estimated in accordance with the procedures specified in the FMP, is less than or equal to 400,000 mt, then:

(A) TALFF is a fixed percentage of the amount of other species allocated to foreign fishing vessels, as follows: 2 percent of the silver hake allocation and 1 percent each of the allocations for red hake, *Illex*, and *Loligo*.

(B) DAH is the amount of estimated domestic annual harvest.

(C) Optimum yield equals DAH plus TALFF.

(ii) *Case 2.* If the spawning stock size at the end of the upcoming fishing year, estimated under the procedures specified in the FMP, is more than 400,000 mt, then OY during that fishing year may not exceed the acceptable catch (AC). AC is that amount which, when taken in addition to the predicted catch in the Canadian fishery, would result in a spawning stock size of 400,000 mt at the end of the upcoming fishing year. AC plus the predicted Canadian catch may not exceed a fishing mortality rate (F) greater than 0.1.

(A) If AC is less than 30,000 mt, and US is less than 30,000 mt, then:

(*1*) TALFF equals Bycatch.

(*2*) DAH equals US minus Bycatch (to the extent necessary).

(*3*) OY equals DAH plus TALFF.

(B) If AC is greater than or equal to 30,000 mt, and US is less than 30,000 mt, then:

(*1*) *TALFF plus reserve.* If OY minus DAH is less than 10,000 mt, then TALFF equals OY minus DAH (but no less than the fixed percentages specified in paragraph (b)(2)(i) (A) of this section), and there is no Reserve. If OY minus initial DAH is greater than or equal to 10,000 mt, then the difference between OY and initial DAH is divided evenly between TALFF and Reserve.

(*2*) OY equals AC minus (30,000 mt, minus US).

(*3*) DAH equals US minus Bycatch (to the extent necessary).

(C) If AC is equal to or greater than 30,000 mt, and US is equal to or greater than 30,000 mt, then:

(*1*) OY equals AC.

(*2*) DAH equals US minus Bycatch (to the extent necessary).

(*3*) *TALFF plus reserve.* If OY minus DAH is less than 10,000 mt, then TALFF equals OY minus DAH (but no less than the fixed percentages specified in paragraph (b)(2)(i)(A) of this section), and there is no reserve. If OY minus initial DAH is greater than or equal to 10,000 mt, then the difference between OY and initial DAH is divided evenly between TALFF and reserve.

(3) *Butterfish.* (i) DAH is the estimated domestic annual harvest.

(ii) DAP is the estimated amount of DAH that domestic processors will process.

(iii) TALFF is a fixed percentage of the amount of other species allocated to foreign fishing vessels, as follows: 6 percent of the *Loligo* allocation, and 1 percent each of the allocations for *Illex*, Atlantic mackerel (when a directed fishery is allowed), silver hake, and red hake.

(iv) OY is the sum of DAH plus TALFF.

(c) *Allowable domestic harvest.* Fish taken within State jurisdiction will be counted against the domestic harvests specified under this section. The allowable domestic harvest for each species is the OY (including OY as increased under paragraph (b)(1)(v) of this section) minus TALFF.

[48 FR 14556, Apr. 4, 1983, as amended at 49 FR 406, Jan. 4, 1984; 49 FR 9571, Mar. 14, 1984]

EFFECTIVE DATE NOTE: At 49 FR 406, Jan. 4, 1984, and 49 FR 9571, Mar. 14, 1984, § 655.21 was amended by revising paragraphs (a)(2), (b) introductory text, (b)(1) in its entirety, (b)(2) introductory text, (b)(2)(i) introductory text, (b)(2)(ii) introductory text, (b)(ii)(A)(*1*), (A)(*2*), (B), (C) introductory text, (C)(*2*), (C)(*3*), and (c). These revisions remain in effect through March 31, 1986.

§ 655.22 Procedures for determining initial annual amounts and adjustments.

(a) On or about January 15 of each year, the Mid-Atlantic Council will prepare and submit recommendations to the Regional Director of the initial annual amounts for the fishing year beginning April 1, based on information gathered from sources specified in paragraph (e) of this section.

(b) By February 1 of each year, the Secretary will publish a notice in the FEDERAL REGISTER that specifies preliminary initial amounts of OY, DAH, DAP, JVP, TALFF, and reserve (if any) for each species. The amounts will be based on information submitted by the Council and from the sources specified in paragraph (e) of this section; in the absence of a Council report, the amounts will be based on information gathered from sources specified in paragraph (e) of this section and other information considered appropriate by the Regional Director. The FEDERAL REGISTER notice will provide for a 30-day comment period.

(c) The Council's recommendation and all relevant data will be available in aggregate form for inspection at the office of the Regional Director during the public comment period.

(d) On or about March 15 of each year, the Secretary will make a final determination of the initial amounts for each species, considering all relevant data and any public comments, and will publish a notice of the final determination and response to public comments in the FEDERAL REGISTER.

(e) Sources used to establish initial annual specifications include:

(1) Results of a survey of domestic processors and joint venture operators of estimated processing capacity and intent to use that capacity (approved by the Office of Management and Budget under OMB control number 0648-0114);

(2) Results of a survey of fishermen's trade associations of estimated fish harvesting capacity and intent to use that capacity;

(3) Landings and catch statistics;

(4) Stock assessments; and

(5) Relevant scientific information.

(f) Any adjustments to the IOY for squid must be published in the FEDERAL REGISTER with the reasons for such adjustment. Any notice of adjustment may provide for a public comment period.

(The information collection requirements in paragraph (e)(2) were approved by the Office of Management and Budget under control number 0648-0114)

[48 FR 14556, Apr. 4, 1983, as amended at 49 FR 407, Jan. 4, 1984]

EFFECTIVE DATE NOTE: At 49 FR 407, Jan. 4, 1984, § 655.22 was amended by revising paragraphs (a) and (b) and adding paragraph (f). Paragraphs (a), (b), and (f) remain in effect through March 31, 1986.

§ 655.23 Reserve releases.

All or part of the Atlantic mackerel reserve may be allocated to TALFF following the procedures of this section.

(a) *Projections*—(1) *Atlantic mackerel.* If there is a Reserve, the Regional Director during October will project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year, based on U.S. landings through September and on the results of a survey of the intent of domestic fishermen to harvest mackerel during the remainder of the year. If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial DAH specified in § 655.21(b)(2)(ii)(C), the Secretary will leave the necessary amount in Reserve. The Secretary will allocate all of the remainder of the Reserve to TALFF. If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial DAH, the Secretary will allocate the entire reserve to TALFF.

(b) *Notice of allocation*—(1) *Atlantic mackerel.* (i) If there is a Reserve, the Secretary, on or about November 1, will publish a notice in the FEDERAL REGISTER stating the amount of mackerel proposed to be allocated from Reserve to TALFF. The notice will contain the latest catch statistics available. The public may comment on the proposed allocation for 15 days after the date of publication.

(ii) The Secretary will publish a final notice of the Reserve allocation in the FEDERAL REGISTER. The notice will contain a summary of all comments and relevant information received during the comment period.

(c) *Subsequent Reserve allocation.* After the first Reserve allocation, the Secretary may allocate any remaining portion of the Reserve to TALFF, if he determines that the domestic harvest will not attain the level projected under paragraph (a) of this section. The Secretary will notify the Executive Directors of the Councils of any subsequent allocation, and will publish a notice in the FEDERAL REGISTER.

[48 FR 14556, Apr. 4, 1983, as amended at 49 FR 407, Jan. 4, 1984]

EFFECTIVE DATE NOTE: At 49 FR 407, Jan. 4, 1984, § 655.23 was amended by revising the introductory text, removing paragraphs (a)(1) and (b)(1) and redesignating paragraphs (a)(2) and (b)(2) as (a)(1) and (b)(1). The introductory text remains in effect through March 31, 1986.

§ 655.24 Closure of the fishery.

(a) *General.* The Secretary shall close any domestic fishery in the FCZ for any species when U.S. fishermen have harvested 80 percent of the allowable domestic harvest (see § 655.21(c)), if such closure is necessary to prevent the allowable domestic harvest from being exceeded. The closure will be in effect for the remainder of the fishing year.

(b) *Notice.* If the Secretary determines that a closure is necessary, he will:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Councils;

(2) Mail notifications of the closure to all holders of permits issued under § 655.5 at least 72 hours before the effective date of the closure;

(3) Provide for adequate notice of the closure to recreational fishermen in the fishery; and

(4) Publish a notice of closure in the FEDERAL REGISTER.

(c) *Incidental catches.* During a period of closure, the trip limit for the species for which the fishery is closed is 10 percent by weight of the total amount of fish on board.

[48 FR 14556, Apr. 4, 1983, as amended at 48 FR 44839, Sept. 30, 1983]

EFFECTIVE DATE NOTE: At 48 FR 44839, Sept. 30, 1983, § 655.24 was amended by revising paragraph (a). Paragraph (a) remains in effect through March 31, 1986.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 46 FR 27494, May 20, 1981, unless otherwise noted.

Subpart A—General Measures

§ 658.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, developed by the Gulf of Mexico Fishery Management Council under the Magnuson Fishery Conservation and Management Act.

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, royal red shrimp, seabob shrimp, and rock shrimp by vessels of the United States within that portion of the Gulf of Mexico over which the United States exercises exclusive fishery management authority.

(c) Regulations governing foreign fishing for royal red shrimp appear in 50 CFR Part 611. Appendix I to § 611.20 contains the total allowable level of foreign fishing for royal red shrimp.

§ 658.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Magnuson fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in bringing any shrimp on board a vessel.

Center Director means the Center Director, Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149. Telephone 305-361-5761.

Committee means the Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee.

Council means the Gulf of Mexico Fishery Management Council, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

FDNR means the Florida Department of Natural Resources.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management plan (FMP) means the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of shrimp;

(b) The attempted catching, taking, or harvesting of shrimp;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of shrimp;

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

FMFC means the Florida Marine Fisheries Commission.

Gulf of Mexico means the geographic area of authority of the Gulf of Mexico Fishery Management Council.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of that vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702, or a designee.

Secretary means the Secretary of Commerce, or a designee

Shrimp means the following species:

Brown shrimp, *Penaeus aztecus*
White shrimp, *P. setiferus*
Pink shrimp, *P. duorarum*

Seabob shrimp, *Xiphopeneus kroyeri*
Rock shrimp, *Sicyonia brevirostris*
Royal red shrimp, *Hymenopenaeus robustus*

State means the State of Florida.

Statistical area means one or more of the 21 statistical grids depicted in Figure 5. In addition, the term includes the following "inside" water areas:

"Inside" water area	Code No.
Charlotte Harbor, FL	4.1
Tampa Bay, FL	5.1
Apalachicola Bay, FL	7.1
St. Andrews Bay, FL	8.1
St. Joseph Bay, FL	8.2
Choctawatchee Bay, FL	9.1
Pensacola Bay, FL	10.1
Alabama Inside Waters (Exclusive of Mississippi Sound), AL	10.2
Little Lagoon, AL	10.5
Mississippi Sound, MS	11.1
Lakes Borgne and Pontchartrain, LA	12.1
Breton and Chandeleur Sounds and Adjacent Marsh Areas, LA	12.2
Inside Waters from Mississippi River to Bayou Lafourche, LA	13.1
Inside Waters from Bayou Lafourche to Atchafalaya River, LA	14.1
Inside Waters from Atchafalaya River to Tigre Point, LA	15.1
Inside Waters from Tigre Point to Louisiana Point, LA	16.1
Sabine Lake, TX	17.2
Galveston Bay System, TX	18.1
Matagorda Bay System, TX	19.1
San Antonio Bay System, TX	19.2
Arkansas Bay System, TX	19.3
Corpus Christi Bay System, TX	20.1
Upper Laguna Madre, TX	20.2
Lower Laguna Madre, TX	21.1

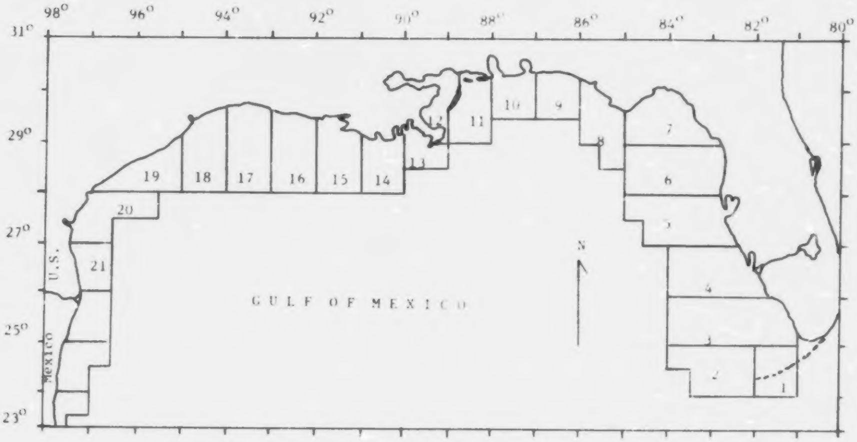

Figure 5. Statistical Grids for Reporting Harvest of Shrimp
For Illustrative Purposes Only - Not to Scale

United States harvested shrimp means shrimp caught, taken, or harvested by vessels of the United States in the Gulf of Mexico, whether or not such shrimp is landed in the United States.

Vessel of the United States means:

(a) A vessel documented or numbered by the U.S. Coast Guard under United States law; or

(b) Any vessel under five net tons registered under the laws of any State.

[46 FR 27494, May 20, 1981, as amended at 48 FR 17099, Apr. 21, 1983; 49 FR 18495, May 1, 1984; 49 FR 30717, Aug. 1, 1984]

§ 658.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) The regulations found in this part are intended to be compatible with regulations pertaining to the Everglades National Park in the State of Florida and Fort Jefferson National Monument. These regulations which prohibit commercial shrimping are found at 36 CFR 7.45 and 36 CFR 7.27, respectively.

(c) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 658.4 Vessel permits and fees.

No permit is required for vessels of the United States fishing for shrimp under this part.

§ 658.5 Reporting requirements.

(a) *Vessel owners and operators.* The owner or operator of any fishing vessel that fishes for, or lands, shrimp or any part thereof in the Gulf of Mexico or in adjoining State waters, and who is selected to report by the Center Director, must provide upon request the following information regarding any fishing trip to the Center Director or his designee:

(1) Name and official number of vessel;

(2) Amount of catch of shrimp by species;

(3) The condition of the shrimp (heads on/heads off);

(4) Depth fished and information regarding fishing location that is specific enough to enable the Center Director or his designee to ascertain the statistical area fished;

(5) Person to whom sold, bartered, or traded;

(6) Number, size and type of gear; and

(7) Effort and period of fishing.

(b) *Dealers and processors.* Any person who receives shrimp or parts thereof by way of purchase, barter, trade or sale from a fishing vessel or person that fishes for, or lands, shrimp or parts thereof in the Gulf of Mexico or in adjoining State waters, and who is selected to report by the Center Director, must provide upon request the following information to the Center Director or his designee:

(1) Fishing vessel (name and official number) or person (if harvested from other than a vessel) from which received;

(2) Amount of shrimp or parts thereof received by species and size category for each vessel trip; and

(3) Exvessel value by size category of shrimp or portions thereof received.

(Approved by the Office of Management and Budget under control number 0648-0013).

[49 FR 18496, May 1, 1984]

§ 658.6 Vessel identification.

(a) *Offical number.* Each vessel of the United States engaged in the shrimp fishery in the Gulf of Mexico FCZ shall:

(1) Display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(2) The official number must be in block arabic numerals in contrasting color to the background.

(3) The official number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels.

(4) The official number shall be permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the registration number clearly legible and in good repair, and

(2) Insure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the official number from any enforcement vessel or aircraft.

§ 658.7 Prohibitions.

It is unlawful for any person to:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shrimp taken or retained in violation of the Act, this part, or of any other regulation promulgated under the Act;

(b) Falsify or fail to report information required to be submitted upon request by § 658.5;

(c) Trawl in a closed area or during a closed season within the FCZ, except as allowed under § 658.24(a);

(d) Transfer directly or indirectly, or attempt to so transfer, any United States harvested shrimp to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes the receipt by such vessel of United States harvested shrimp;

(e) Falsify or fail to affix and maintain vessel markings as required by § 658.6;

(f) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation issued under the Act;

(g) Fail to comply immediately with enforcement and boarding procedures specified in § 658.8;

(h) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(i) Resist a lawful arrest for any act prohibited by this part;

(j) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(k) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part;

(l) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shrimp or the final disposition of such shrimp through the sale of the shrimp; or

(m) Violate any other provision of this part, the Act, or any regulation issued under the Act.

[46 FR 27494, May 20, 1981, as amended at 49 FR 18496, May 1, 1984]

§ 658.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed. a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly.'

[49 FR 9736, Mar. 15, 1984]

§ 658.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 658.20 Fishing year.

The fishing year for all species of shrimp, except royal red shrimp, begins on May 1 and ends on April 30. The fishing year for royal red shrimp begins on January 1 and ends on December 31.

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp is 111.6 metric tons. There is no domestic quota for other species of shrimp.

(b) *Territorial waters.* These regulations do not limit the harvest of shrimp resources in waters landward of the FCZ. However, harvest from these waters will be taken into account in the calculation of the maximum sustainable yield and optimum yield from the fishery.

(c) *Closure.* When the domestic quota for royal red shrimp is reached, the Regional Director shall close the fishery by publishing a notice in the FEDERAL REGISTER.

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

§ 658.22 Tortugas shrimp sanctuary.

The area commonly known as the "Tortugas Shrimp Sanctuary," off the State of Florida, is closed to all trawl fishing. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 1):

Point	Latitude	Longitude	Common name
N	25°52.9'N.	81°37.95'W.	Coon Key Light.
F	24°50.7'N.	81°51. 3'W.	
G	24°40.1'N.	82°26. 7'W.	New Grounds Shoals Light.
H	24°34.7'N.	82°35. 1'W.	Rebecca Shoals Light.
P	24°35 'N.	82°08 'W.	Marquessas Keys.

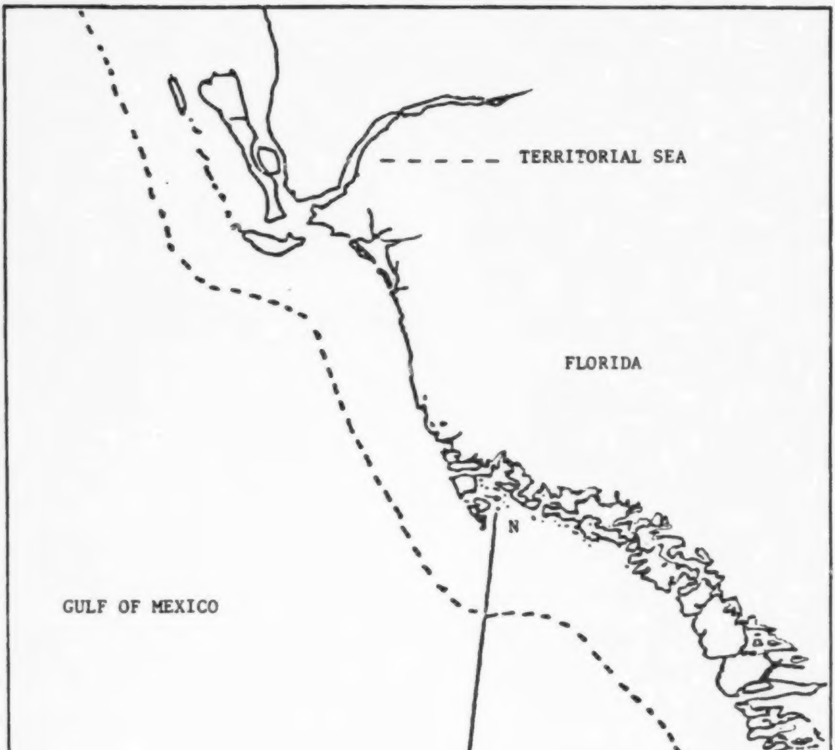

TERRITORIAL SEA
FLORIDA
GULF OF MEXICO
N
F
R
Q
G
H
P

FIGURE 1. LOCATION OF TORTUGAS SHRIMP SANCTUARY.

[46 FR 27494, May 20, 1981, as amended at 50 FR 37199, Sept. 12, 1985]

§ 658.23 Stone crab area restrictions.

Between January 1 and one hour after sunset (local time) May 20, the area described in this paragraph is closed to trawl gear, including live bait gear. The area is that part of the fishery conservation zone shoreward of a line connecting the following points (see Figure 2):

Point	Latitude	Longitude	Common name
B	26°16'N	81°58.5'W	
C	26°00'N	82°04'W	
D	25°09'N	81°47.6'W	
E	24°54.5'N	81°50.5'W	
M	24°41.9'N	81°40.5'W	Snipe Point.

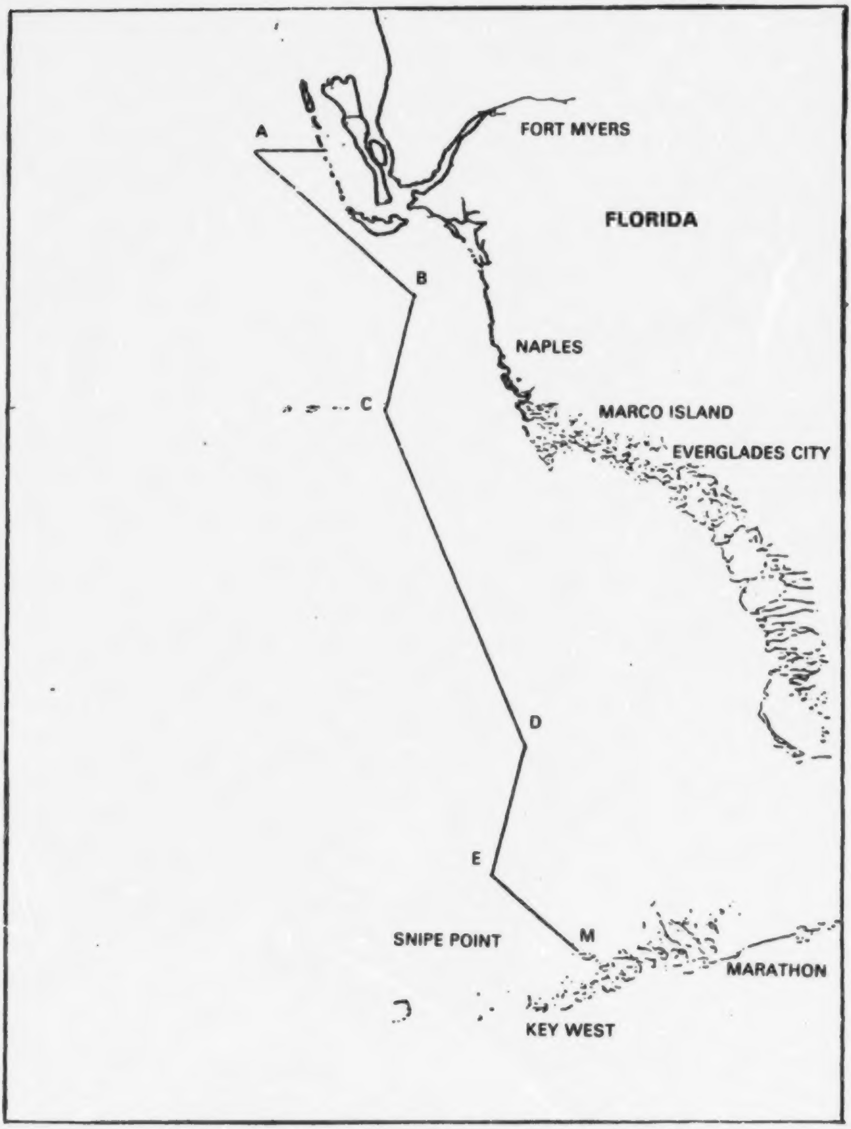

A
FORT MYERS
FLORIDA
B
NAPLES
C
MARCO ISLAND
EVERGLADES CITY
D
E
SNIPE POINT
M
MARATHON
KEY WEST

FIGURE 2. AREA CLOSED TO SHRIMPING BETWEEN JANUARY 1 AND MAY 20.

(b)(1)(i) Between 0001 hours October 5 to 2400 hours May 20 each year, it is unlawful to fish for shrimp in the following two areas of the FCZ (see Figure 4):

(A) That part of the FCZ identified as Zone I and bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE 1

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
X	28°55′20″ N	83°00′06″ W	31365.0	45342.8	63000.0
C	28°26′01″ N	82°59′45″ W	31208.7	45103.6	63000.0
D	28°26′01″ N	82°56′47″ W	31213.2	45080.0	62980.8
T	28°27′43″ N	82°55′07″ W	31226.2	45080.0	62970.0
E	28°41′39″ N	82°55′18″ W	31301.0	45193.1	62970.0
F	28°41′39″ N	82°56′06″ W	31299.2	45199.1	62975.0
G	28°48′55″ N	82°56′19″ W	31337.8	45260.0	62975.0
W	29°49′25″ N	82°55′49″ W	31341.2	45260.0	62971.2

Thence northerly along the State boundary to point X.

(B) That part of the FCZ identified as Zone III and bounded by a continuous line connecting points expressed by latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE III

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
Z	28° 37′ 44″ N	82° 53′ 02″ W	31284.3	45143.0	62955.0
S	28° 30′ 51″ N	82° 52′ 54″ W	31247.6	45086.8	62955.0
U	28° 30′ 51″ N	82° 52′ 02″ W	31249.5	45080.0	62949.5
Y	28° 31′ 28″ N	82° 51′ 28″ W	31253.9	45080.0	62945.4

Thence northerly along the State boundary to point Z.

(ii) It is unlawful to fish for shrimp in that part of the FCZ identified as Zone IV (see Figure 4) during the period 0001 hours December 2 to 2400 hours April 1. Zone IV is bounded by a continuous line connecting points expressed in latitude and longitude (LORAN notations are unofficial and are included only for the convenience of the fishermen):

ZONE IV

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
V	28°41′39″ N	82°54′08″ W	31303.0	45183.1	62961.5
E	28°41′39″ N	82°55′18″ W	31301.0	45193.1	62970.0
O	28°30′51″ N	82°55′06″ W	31242.7	45104.3	62970.0
S	28°30′51″ N	82°52′54″ W	31247.6	45086.8	62955.0
Z	28°37′44″ N	82°53′02″ W	31284.3	45143.0	62955.0

Thence, northerly along the State boundary to point V.

(iii) It is unlawful to fish for shrimp in that part of the FCZ identified as Zone V (see Figure 4) during the period 0001 hours December 1 to 2400 hours March 15. Zone V is bounded by a continuous line connecting points expressed as latitude and longitude (LORAN notations are unofficial and are included for the convenience of the fishermen):

ZONE V

Point	Latitude	Longitude	Loran chain 7980		
			X	Y	Z
W	28°49'25" N	82°55'49" W	31341.2	45260.0	62971.2
G	28°48'55" N	82°56'19" W	31337.8	45260.0	62975.0
F	28°41'39" N	82°56'06" W	31299.2	45199.1	62975.0
V	28°41'39" N	82°54'06" W	31303.0	45183.1	62961.5

Thence, northerly along the State boundaries to point W.

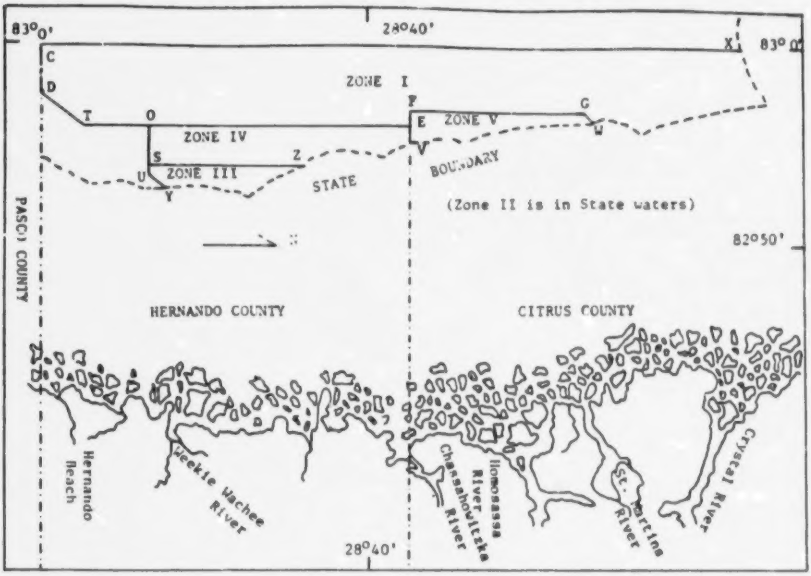

83°0'
28°40'
83°0'
X
C
D
ZONE I
T
O
F
E
ZONE V
G
W
ZONE IV
S
Z
V
U
ZONE III
Y
STATE
BOUNDARY
(Zone II is in State waters)
82°50'
PASCO COUNTY
HERNANDO COUNTY
CITRUS COUNTY
Hernando Beach
Weekie Wachee River
Chassahowitzka River
Homosassa River
St. Martins River
Crystal River
28°40'

Figure 4 Chart delineating areas closed to fishing for shrimp or stone crabs (not to scale, for illustrative purposes only).

(2) No person may place into the management area any article, including fishing gear, with the intent to interfere with fishing or obstruct or damage fishing gear or fishing vessels of others; or to utilize willfully fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

[46 FR 27494, May 20, 1981, as amended at 49 FR 30717, Aug 1, 1984; 49 FR 39163, Oct. 4, 1984; 50 FR 25714, June 21, 1984]

§ 658.24 Zone modification procedures.

(a) *Procedure for modifying existing restricted fishing areas for shrimp fishermen in the FCZ* (inshore of 83.0° W. longitude) *off Pasco, Hernando, and Citrus Counties, Florida, by notice.* (1) The Pasco, Hernando, and Citrus Counties Shrimping and Crabbing Advisory Committee (Committee) may propose modification to the exclusive fishing areas for shrimping and for crabbing provided by § 658.23 to resolve any conflict in both State waters and the FCZ inshore of 83.0° W. longitude, at its public meetings. Such a zoning proposal for fishing areas may be initiated at anytime by the Committee in response to changing conditions in the fishery and may include zoning configurations that fluctuate or change on specific dates to allow for optimum production by the user groups affected.

(2) The Committee will submit the zoning proposal to the State regulatory agencies, Florida Department of Natural Resources (FDNR) and Florida Marine Fisheries Commission (FMFC), for implementation in State waters and may submit the proposal to the Council for initial review and comment.

(3) After the State has accepted the proposal for promulgation as a rule, the State may request that the Council adopt that portion of the zoning proposal relating to the FCZ. The Council will review the proposal and administrative record developed by the State in support of its proposed rule and will recommend to the Regional Director that the proposal be implemented (or not implemented) or implemented with minor modifications in FCZ. If the Council or Regional Director determine that the opportunity for public comment through the State system was inadequate, they may hold public hearings on the zoning proposal affecting the FCZ. The Council may also avail itself of the advice and counsel of its Scientific and Statistical Committee, its Shrimp and Stone Crab Advisory Panels, or an Ad Hoc Advisory Panel consisting of persons fishing the Federal waters, in the review of the proposal or to propose zoning modifications. Should the Council recommend that the Federal portion of the proposal not be implemented or be modified, it will immediately notify the State and specify its reasons for such action.

(4) If the Secretary, after receiving the recommendations of the Council, concludes that such recommendations are consistent with the objections of the FMPs, the Magnuson Act, other applicable law, the Secretary will implement them by notice in the FEDERAL REGISTER. If the Regional Director determines that the recommended action of the Council should not be implemented, the Regional Director will immediately notify the Council and State of his reasons and may suggest an alternative to the recommended action. The Council, after conferring with the State, will immediately advise the Regional Director as to the acceptability of the alternative.

(5) In the event that the Committee fails to act or is unable to develop a compromise solution for fishing the area, or if the Committee is abolished or otherwise becomes nonfunctional, the Council will call upon the FMFC to provide the recommendations under paragraphs (a)(1) and (2) of this section. The Council may then utilize its own Ad Hoc Advisory Panel consisting of fishermen from the area affected to advise the Council on the acceptability of these recommendations or to propose zoning modifications.

(6) If the Committee is enlarged or restructured to have authority over zoning for other counties, the restructured committee may provide recommendations under paragraphs (a) (1) and (2) of this section and the Secretary may implement such recommendations under paragraph (a) (4) of this section.

(7)(i) The Secretary may, with the concurrence of the Council, modify existing zoning by publishing a notice in the FEDERAL REGISTER if the Regional Director determines that the procedures in paragraphs (a)(1) through (5) of this section cannot be followed in time to prevent inequitable access to the resources.

(ii) The Secretary will invite public comment prior to the effective date of the notice. If the Secretary determines, for good cause, that a notice must be promulgated immediately, comments will be received for 15 days after the effective date of the notice.

(iii) As soon as practicable after the end of the comment period, the Secretary will either rescind modify or allow the modification to the existing zoning to remain unchanged through notice in the FEDERAL REGISTER.

(8)(i) In the event that the Regional Director determines that the procedural paragraphs (a)(1) through (5) of this section cannot be followed in time to resolve or prevent serious conflict, the Secretary may, with the concurrence of the Council, publish a notice in the FEDERAL REGISTER to

(A) Close the area or portion thereof to shrimp fishing for a period not to exceed 30 days; and/or

(B) Modify the configuration of the existing boundaries of the fishing areas as specified in the rule in the FCZ for part of or for the duration of the stone crab season and close the fisheries in the areas affected for 10 days to allow stone crab traps to be moved. Provide such buffer zones where no fishing is allowed, as are deemed necessary.

(ii) Not later than 72 hours after the effective date of the modification to the regulation under paragraph (b)(1) of this section, the Regional Director will conduct a public fact-finding hearing. Notice of such hearing will be provided to the following:

(A) The Chairman of the Council or his designee;

(B) The Director of the FDNR or his designee;

(C) The Chairman of the FMFC or his designee;

(D) Local news media as may be appropriate;

(E) Such user group representatives or organizations as may be appropriate and practicable; and

(F) Others deemed appropriate by the Regional Director.

(iii) The fact-finding hearing will be for the purpose of evaluating the following:

(A) The existence and seriousness of the conflict needing resolution by the modification to the existing rule;

(B) The appropriate duration of the modification to the existing rule;

(C) Other solutions to the conflict; and

(D) Other relevant matters.

(iv) The Secretary, within ten days after conclusion of the factfinding hearing will either rescind, modify or allow the modification to the existing rule to remain unchanged through notice in the FEDERAL REGISTER.

(b) The Secretary, in consultation with or based on recommendations by the Council, may by regulatory amendment take such action as may be necessary and appropriate to resolve any conflict in the area off Pasco, Hernando and Citrus Counties, Florida (inshore of 83.0' W. longitude) or any other part of the FCZ, provided such action is taken in a manner which to the maximum extent practicable is consistent with action recommended by or taken by the adjacent coastal State.

(c) Nothing contained in the section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

[49 FR 30718, Aug. 1, 1984]

§ 658.25 Texas closure.

(a) *Area and season restrictions.* Between June 1 and July 15, the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the fishery conservation zone off the State of Texas west of a line connecting point A (29°32.1'N. lat., 93°47.7'W. long.) to point B (26°11.4'N. lat., 92°53'W. long.) (see Figure 3).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date by as much as 15 days, to provide an earlier, later, or longer closure; but the duration of the closure may not exceed 60 days, nor be less than 45 days.

(1) The Regional Director must base an adjustment of the closing or opening date on the following criteria:

(i) Biological data collected by the Texas Parks and Wildlife Department (TPWD) and used to predict when brown shrimp in the central and northern bays of Texas will reach a total length of 80 to 90 mm; and

(ii) The strength of outgoing tides at the time predicted under paragraph (b)(1)(i) of this section; and

(iii) Other ecological data relevant to the timing or duration of the closure.

(2) The Regional Director, after consulting with the TPWD, may adjust the closing or opening date by issuing a notice in the FEDERAL REGISTER. The notice will specify the adjusted date and the reasons for the adjustment.

(3) A notice in the FEDERAL REGISTER advancing the closing date or delaying the opening date must be available to the public for 72 hours before its effective date. A notice in the FEDERAL REGISTER delaying the closing date or advancing the opening date must be available to the public for 24 hours before its effective date.

(4) A notice in the FEDERAL REGISTER may be made available to the public by any of the following methods:

(i) Procedures customarily used by the TPWD for posting and publicizing similar notices of opening or closure;

(ii) Publication of a notice in a newspaper of major circulation in each of the following cities: Brownsville, TX; Aransas Pass, TX; Galveston, TX; Corpus Christi, TX; Freeport, TX; Port Arthur, TX; Cameron, LA; and Morgan City, LA;

(iii) Notification of shrimp fishery organizations in all the States bordering the Gulf of Mexico;

(iv) Broadcast of a notice at time intervals, channels, and frequencies customarily used by the TPWD to broadcast similar notices of opening or closure.

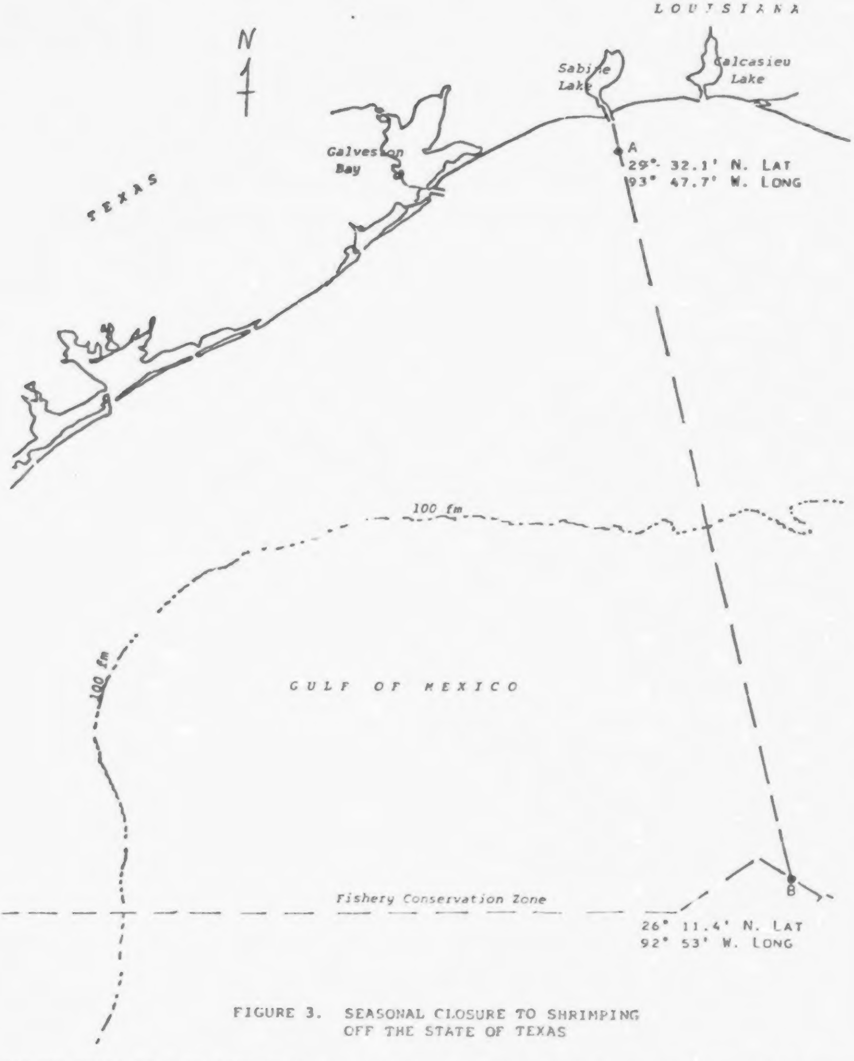

LOUISIANA
N
Sabine Lake
Calcasieu Lake
Galveston Bay
TEXAS
A
29° 32.1' N. LAT
93° 47.7' W. LONG
100 fm
100 fm
GULF OF MEXICO
Fishery Conservation Zone
B
26° 11.4' N. LAT
92° 53' W. LONG

FIGURE 3. SEASONAL CLOSURE TO SHRIMPING OFF THE STATE OF TEXAS

[46 FR 27494, May 20, 1981. Redesignated at 49 FR 30718, Aug. 1, 1984, and amended at 50 FR 37199, Sept. 12, 1985]

§ 658.26 Size restrictions.

There are no minimum size requirements for shrimp harvested in the fishery conservation zone.

[46 FR 27494, May 20, 1981. Redesignated at 49 FR 30718, Aug. 1, 1984]

§ 658.27 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[46 FR 27494, May 20, 1981. Redesignated at 49 FR 30718, Aug. 1, 1984]

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Subpart A—General Measures

Sec.
661.1 Purpose.
661.2 Relation to other laws.
661.3 Definitions.
661.4 Reporting requirements.
661.5 General restrictions.
661.6 Facilitation of enforcement.
661.7 Penalties.
661.8 Experimental fishing.
661.9 Scientific research.
661.10 Treaty Indian fishing.

Subpart B—Management Measures

661.20 Annual actions.
661.21 Inseason actions.
661.22 Other actions.
661.23 Notice procedures.
APPENDIX

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 43682, Oct. 31, 1984, unless otherwise noted.

Subpart A—General Measures

§ 661.1 Purpose.

The purpose of this part is to provide for the management of the salmon and steelhead fisheries off the coasts of Washington, Oregon, and California in the fishery conservation zone (the FCZ, also known as the 3-to-200-mile zone) over which the United States exercises exclusive fishery managment authority (i.e., the Pacific Fishery Management Council's Salmon Fishery Management Area) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

§ 661.2 Relation to other laws.

(a) This part does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48°N. latitude and the provisional international boundary between the United States and Canada.

(b) Any person fishing subject to this part who also engages in fishing for groundfish should consult Federal regulations at 50 CFR Part 663 for applicable requirements of that part, including the requirement that vessels engaged in commercial fishing for groundfish (except commerical passenger vessels) have vessel identification in accordance with § 663.6 of that part.

(c) This part recognizes that any State law which pertains to persons licensed or vessels registered under the laws of that State and which is consistent with this part or any applicable Federal fishery management plan or amendment for the commercial and recreational salmon fisheries off the coasts of Washington, Oregon, and California, including any State landing law, will continue to have force and effect in the fishery management area with respect to fishing activities addressed herein.

(d) Any person fishing subject to this part is bound by the international boundaries of the fishery management area described in § 661.3, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 661.3 Definitions.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

(b) Any special agent of the National Marine Fisheries Service or other officer authorized by the Secretary;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

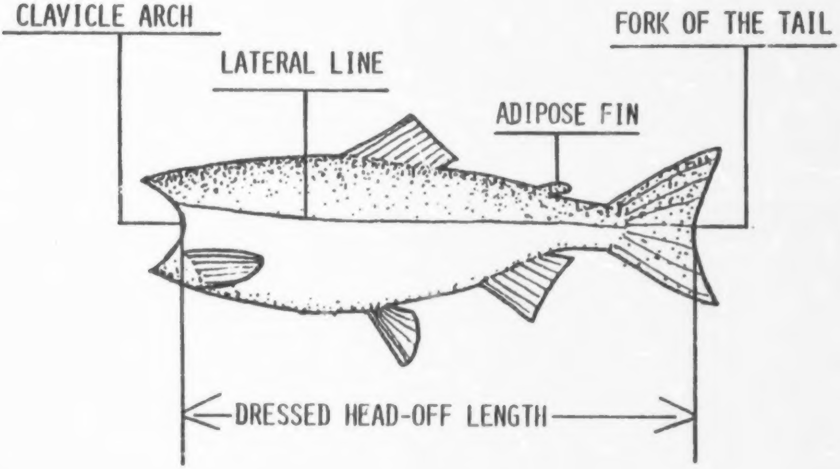
(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where *barbless hooks* are specified, hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 661.23, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council, 526 SW Mill Street, Portland, OR 97201.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.



Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California between 3 and 200 miles offshore, bounded on the north by the Provisional International Boundary between the United States and Canada and bounded on the south by the International Boundary between the United States and Mexico. The inner boundary of the FCZ is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit"). The outer boundary of the FCZ is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(a) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29'37" N. latitude, 124°43'33" W. longitude), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(b) Northern and northwestern boundary is a line [1] connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.;
48°30'11" N. lat., 124°47'13" W. long.;
48°30'22" N. lat., 124°50'21" W. long.;
48°30'14" N. lat., 124°52'52" W. long.;
48°29'57" N. lat., 124°59'14" W. long.;
48°29'44" N. lat., 125°00'06" W. long.;
48°28'09" N. lat., 125°05'47" W. long.;
48°27'10" N. lat., 125°08'25" W. long.;
48°26'47" N. lat., 125°09'12" W. long.;
48°20'16" N. lat., 125°22'48" W. long.;
48°18'22" N. lat., 125°29'58" W. long.;
48°11'05" N. lat., 125°53'48" W. long.;
47°49'15" N. lat., 126°40'57" W. long.;
47°36'47" N. lat., 127°11'58" W. long.;
47°22'00" N. lat., 127°41'23" W. long.;
46°42'05" N. lat., 128°51'56" W. long.;
46°31'47" N. lat., 129°07'39" W. long.

(c) The southern boundary of the fishery management area is the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat., 117°27'49" W. long.;
32°37'37" N. lat., 117°49'31" W. long.;
31°07'58" N. lat., 118°36'18" W. long.;
30°32'31" N. lat., 121°51'58" W. long.

(d) The inner boundaries of the fishery management area are subject to change if the Secretary assumes responsibility for the regulation of the salmon fishery within State waters under section 306(b) of the Magnuson Act, defined below.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a) through (c) of this definition.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type that is normally used for fishing.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, which has a present capability for (a) on-board freezing of the catch, *and* (b) storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as "spoons", "wobblers", "dodgers", and flexible plastic lures are not considered plugs, and may not be used where "plugs only" are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 661.23 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 661.23.

Regional Director means the Director, Northwest Region, National Marine Fisheries Service (7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115) or his designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, National Marine Fisheries Service, acting in consultation with the Director, Southwest Region, National Marine Fisheries Service, 300

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[1] The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18002.

South Ferry Street, Terminal Island, CA 90731

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to—

Chinook (king) salmon—*Oncorhynchus tshawytscha*
Coho (silver) salmon—*Oncorhynchus kisutch*
Pink (humpback) salmon—*Oncorhynchus gorbuscha*
Chum (dog) salmon—*Oncorhynchus keta*
Sockeye (red) salmon—*Oncorhynchus nerka*

Secretary means the Secretary of Commerce, or a designee.

Steelhead means the anadromous form of the rainbow trout, *Salmo gairdneri*.

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 661.23.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

[49 FR 43682, Oct. 31, 1984; 49 FR 46148, Nov. 23, 1984, as amended at 50 FR 813, Jan. 7, 1985]

§ 661.4 Reporting requirements.

(a) This part recognizes that catch and effort data necessary for implementation of any applicable fishery management plan or amendment is collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection provisions. No additional catch reports will be required of fishermen or processors as long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide the Secretary with statistical information adequate for management.

(b) As appropriate, and to the extent it exists, relevant unaggregated data collected by observers placed aboard fishing vessels or by port samplers will be utilized in making preseason and inseason management adjustments to regulations as authorized by this part.

§ 661.5 General restrictions.

(a) The fishery management area is closed to salmon fishing except as opened by this part or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified. Except as otherwise provided by or pursuant to Federal fishing regulations or permits, the following restrictions apply to all salmon fishing in the fishery management area.

(b) It is unlawful for any person to—

(1) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear which are established annually under § 661.20 so long as that gear is legal in the fishery for which it is being used.

(2) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(3) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 661.20(a)(4) for treaty Indian fishing;

(v) In violation of any notice issued under this part; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(4) Take and retain or possess aboard a fishing vessel any species of salmon which is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(5) Possess aboard a fishing vessel a salmon, for which a minimum total length is extended, or cannot be determined, except that "dressed, head-off salmon" may be possessed aboard a "freezer trolling vessel" (unless the adipose fin of such salmon has been removed—see paragraph (b)(7) of this section).

(6) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this part.

(7) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(8) Take and retain, or possess any steelhead (*Salmon gairdneri*) within the fishery management area, unless such take and retention qualifies as treaty Indian fishing as that term is defined in this Subpart A of this part.

(9) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken or retained in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act.

(10) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act.

(11) Forcibly assult, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(10) of this section;

(12) Resist a lawful arrest for any act prohibited by this part; or

(13) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part.

(14) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

(15) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(16) Violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any regulation or permit promulgated under the Magnuson Act.

§ 661.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light

signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "You should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "You should stop or heave to; I am going to board you."

(4) "L" (.-..) means "You should stop your vessel instantly."

[49 FR 43682, Oct. 31, 1984; 49 FR 46148, Nov. 23, 1984]

§ 661.7 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act and implementing regulations.

§ 661.8 Experimental fishing.

(a) The Secretary may allow such experimental fishing in the fishery management area as may be recommended by the Council, the Federal government, State government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) The Secretary will not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Secretary is subject to all provisions of this part, except those portions which relate to the purpose and nature of the experimental fishery. These exceptions will be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter must be carried aboard each participating vessel.

§ 661.9 Scientific research.

Nothing in this part is intended to inhibit or prevent any scientific or

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

oceanographic research in the fishery management area by a scientific *research vessel.* The Regional Director will acknowledge any notification he might receive of any bona fide scientific or oceanographic research with respect to salmon being conducted by a scientific research vessel, by issuing to the operator or master of that vessel a letter or acknowledgment, containing information on the purpose, locations, and schedules of the activities. The Regional Director will transmit copies of this letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

§ 661.10 Treaty Indian fishing.

Except as otherwise provided in this part, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act.

Subpart B—Management Measures

§ 661.20 Annual actions.

(a) The Secretary will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing a notice in the FEDERAL REGISTER under § 661.22. Management specifications may include allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, selective fisheries, and optional inseason management provisions for each fishery and may be specified as follows:

(1) *Commercial fishing.* (i) Area, seasons, species, zone, and gear restrictions.

(ii) Length restrictions (minimum total lengths, in inches, and minimum lengths for dressed, head-off, in inches).

(2) *Recreational fishing.* (i) Area, season, species, zone, daily bag limits, and gear restrictions.

(ii) Length restrictions (minimum total lengths, in inches).

(3) *Quotas.* Commercial and recreational, by species (including fish caught 0–3 nautical miles seaward of Washington, Oregon, and California).

(4) *Treaty Indian fishing.* (i) Area, season, fixed or adjustable quotas, species, zone, and gear restrictions.

(ii) Length restrictions (minimum total length, in inches).

(b) *Schedule and procedures for annual actions.* The schedule and procedures for establishing and adjusting annual management specifications are described in the Appendix to this part (Section I.; II. A. and B.) The schedule will be followed to the extent possible. In the event that a deviation from the schedule occurs, it will not affect the validity of any action taken.

EFFECTIVE DATE NOTE: At 50 FR 31849, Aug. 7, 1985, an emergency rule was issued amending § 661.20. The introductory text of paragraph (a) and paragraph (a)(2)(i) were amended by adding, after the word "seasons," the phrase "allowable fishing days per week", effective from 0001 hours local time, August 2, 1985 until 2400 hours local time, October 31, 1985.

§ 661.21 Inseason actions.

(a) *Fixed inseason management provisions.* The secretary is authorized to take the following inseason management actions annually as appropriate. They are more specifically described in the appendix to this part, section III., together with the procedures for their implementation.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the FEDERAL REGISTER under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for

all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by publication of a notice in the FEDERAL REGISTER under § 661.23.

(3) *Adjustment for error in preseason estimate.* The Secretary may, by publication of a notice in the FEDERAL REGISTER under § 661.23, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified.

(b) *Optional inseason management provisions.* The following are optional inseason management provisions. They are more specifically described in the appendix to this part, section III., together with the procedures for their development, selection, and implementation. Whether one or more of these measures will be used during a particular season will be determined annually.

(1) Modification to coho quotas and seasons based on inseason reassessment of private hatchery contributions.

(2) Modifications to commercial coho quotas and seasons based on inseason assessment of coho hooking mortality during all-species seasons.

(3) Modifications to quotas and seasons based on inseason revisions to abundance estimates.

(4) Reduction in quotas and seasons due to unanticipated salmon catches in the territorial sea.

(5) Redistribution of quotas to achieve an overall quota.

(6) Boundary modifications to promote attainment of quotas.

(7) Modification of recreational daily bag limits.

[49 FR 43682, Oct. 31, 1984, as amended at 50 FR 813, Jan. 7, 1985; 50 FR 4978, Feb. 5, 1985]

EFFECTIVE DATE NOTE: At 50 FR 31849, Aug. 7, 1985, an emergency interim rule was issued amending § 661.21 by adding paragraph (b)(8), effective from 0001 hours local time, August 2, 1985 until 2400 hours local time, October 31, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 661.21 Inseason actions.

* * * * *

(b) * * *

(8) Modification to number of allowable days of recreational fishing per week between the U.S.-Canada border and the U.S.-Mexico border.

§ 661.22 Other actions.

Modifications to escapement goals. Escapement goals, together with criteria and procedures for their modification, are set forth in the Appendix to this part, Section IV. The Secretary is authorized to modify an escapement goal if—

(a) A comprehensive technical review of the best scientific information available provides conclusive evidence which, in the view of the Salmon Plan Development Team and the Council, justifies modification of an escapement goal;

(b) For Oregon coastal chinook, specific stock goals are developed within the overall goal for south coast and north coast stocks respectively; or

(c) Action by a Federal court indicates that modification of an escapement goal is appropriate.

[50 FR 813, Jan. 7, 1985]

§ 661.23 Notice procedures.

(a) Actions taken under §§ 661.20, 661.21, and 661.22 will be by notice issued under this section and published in the FEDERAL REGISTER.

(b) The Secretary will publish the notice in the FEDERAL REGISTER and invite public comment prior to its effective date, except as provided in paragraph (c) of this section.

(c) If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

(d) *Effective dates.* (1) Any notice issued under this section is effective on the date specified in the notice or on the date the notice is filed for public inspection with the Office of the Federal Register, whichever is later.

(2) Any notice issued under this section will remain in effect until the expiration date stated in the notice or until rescinded, modified, or superseded. However, no notice of an inseason action has any effect beyond the end of the calendar year in which it is issued.

(e) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevent to the action also will be made available for public review during normal office hours at the Southwest Regional Office, National Marine Fisheries, 300 South Ferry Street, Terminal Island, California.

(f) Nothing contained in the part limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act, if the Secretary determines that an emergency involving the salmon fishery exists. Such emergency regulations are effective upon filing for public inspection with the Office of the Federal Register.

[49 FR 43682, Oct. 31, 1984. Redesignated and amended at 50 FR 813, Jan. 7, 1985]

APPENDIX

I. INTRODUCTION

The regulations implementing the "Proposed Framework Plan for Managing the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1985" amend the Pacific Council's 1978 FMP to incorporate a flexible framework for setting preseason and inseason management measures without the need for a plan amendment. Under this framework amendment, certain principles and measures are fixed to provide a long-term management system, which cannot be altered without a plan amendment. Other measures are flexible and are determined before or during each season according to procedures specified in this document. The schedule for preseason modification of the regulations is shortened under this framework amendment, requiring approximately 60 days from initiation of a resource status report to implementation of regulatory changes. The framework provisions for annual adjustments, both preseason and inseason, are explained below. More detail concerning this framework mechanism and the rationale for its various components are presented in Chapter 3 of the FMP.

II. ANNUAL CHANGES TO MANAGEMENT SPECIFICATIONS

A. *Schedule for Establishing or Adjusting Annual Management Specifications.* The approximate schedule of events leading to the Secretary's annual management specifications is indicated below.

Approximate Date and Event

First week of March: The Council publishes a notice in the FEDERAL REGISTER announcing availability of documents, dates and locations of the two Council meetings to follow, dates and locations of public hearings, and the complete schedule for determining proposed and final management measures.

Second week of March: The Council's Salmon Plan Development Team (Team) distributes a report to the Council, its advisors, and the public recommending specific management measures for the upcoming season.

Third week of March: The Team's report is reviewed at a joint meeting of the Council's Scientific and Statistical Committee, the Team, and the Salmon Advisory Subpanel.

Third week of March: The Council meets to act on proposed management measures.

Last week of March: The Team distributes a report analyzing the impacts of the proposed annual management measures to the Council, its advisors, and the public.

First week of April: Public hearings.

Mid-April: The Council meets to adopt its final annual recommendations and submit them to the Secretary.

First week of May: A notice of Secretary's decision and final annual actions is published in the FEDERAL REGISTER.

May 15: Close of public comment period.

B. *Procedures for Establishing and Adjusting Annual Management Measures.* 1. Allowable ocean harvest levels and quotas. The following procedures describe the annual process used by the Salmon Team in estimating the allowable ocean harvest levels based on biological considerations. The Council may modify these estimates based on socioeconomic data and analysis, in accordance with Magnuson Act requirements, to calculate the final allowable ocean harvest levels.

(a) *Coho south of Leadbetter Point (Oregon Production Index Area).* A preseason estimate will be made each year of the coho stock size in the Oregon Production Index Area (OPI) using the OPI abundance predictor (jack index and an independent estimate of the private hatchery catch contribution). The number of three-year-old adult coho in the OPI area for a given year will be predicted by the number of two-year-old jack coho returning to selected facilities the prior year using the most updated relationship of jacks to adults. A separate estimate will be made of fish of private hatchery origin contributing to the ocean catch in the OPI area based on the number of smolts released, the recent average survival rate, and the expected harvest rate (based on a recent observed rate) as follows:

Number of smolts released × estimated survival rate × estimated harvest rate of private hatchery fish associated with the harvest rate appropriate for the other OPI stocks = expected catch of private hatchery coho.

The total coho abundance in the OPI area will be determined by the sum of adults predicted by the OPI jack index and the expected private hatchery catch. The total allowable ocean coho harvest for the OPI area will be determined by subtracting the OPI ocean escapement goal from the total stock size estimate for the OPI area. The total allowable ocean harvest for OPI area then will be partitioned based on recent historical averages (and observed distribution patterns of private hatchery fish) into two areas: from Leadbetter Point to Cape Falcon, Oregon; and from Cape Falcon to the U.S.-Mexico border. The harvest may be partitioned further into specific subareas. The total allowable harvest, as well as the allowable harvest in individual subareas, may be modified to address conservation needs of Oregon coastal and Washington coastal coho.

(b) *Coho north or Cape Falcon.* Preseason abundance forecasts will be made for each stock based upon the best available forecasting techniques and consistent with forecasts made to establish preseason management plans for fisheries inside state waters. The Washinton Department of Fisheries/National Bureau of Standards (WDF/NBS) model will be adjusted to expected abundance levels by stocks. WDF/NBS model fishing rates will be adjusted to reflect anticipated regulations and exploitation rates asssociated with fisheries in Canada, Washington, Oregon, and California. Adult terminal run sizes will be estimated, in the absence of prior interceptions by fishermen subject to treaty Indian allocation requirements for management units with treaty obligations, using the WDF/NBS model. Treaty Indian and non-Indian harvest shares will be computed for each appropriate stock. The non-Indian troll and recreational quotas north or Cape Falcon will be computed with the WDF/NBS model based upon providing sufficient escapement from the ocean to provide for spawning escapement objectives and treaty shares of the weakest stocks. Separate quotas may be established for subareas within the area north of Cape Falcon. The allowable harvest in the area from Cape Falcon to Leadbetter Point will be established to address a blend of OPI and Washington state coho management considerations. Specific provisions for non-Indian fishery needs inside State waters may be built into the quotas. Ocean coho quotas will be defined as either the maximum total allowable harvest of all stocks, which will be be estimated prior to the fishing season using the WDF/NBS model based on the maximum allowable harvest impact on weak stocks, or, if tools to monitor the actual catch of the ueak stocks inseason become available, as the maximum allowable ocean harvest of the weak stocks only.

(c) *California chinook.* Chinook abundance will be estimated relative to the previous year or to an average by examining factors including, but not limited to, relative ocean abundance of two-year-old and three-year-old chinook in the previous year, ocean escapements of two- and three-year-olds in key river systems in the previous year, magnitude of brood year escapements and hatchery releases, expected change in survival of hatchery fish due to changes in hatchery practices (e.g., time and location of release), and environmental factors (such as abundance of forage, floods and droughts). When a relative measure of expected chinook abundance is obtained, past management plans and their impact on escapements will be analyzed by simulation modeling to determine the appropriate harvest to meet the desired level of escapement for a four-year ocean management period. The appropriate fishing season dates which would likely produce that harvest then will be estimated after analysis of expected fishing effort. For fall chinook salmon, the end of the season will be set at the time when most maturing fish have left the ocean in order to avoid problems of hooking fish which legally must be released and to increase poundage yield by allowing all immature fish to grow be harvested in the following year.

(d) *Oregon coastal chinook south of Cape Falcon.* A relative measure of stock abundance will be derived based on factors including, but not limited to, brood year escapement levels contributing to the year's fishery, catch levels in prior years, ocean assessment of two- and three-year-old chinook in previous years, relative age composition in prior years, environmental conditions, hatchery production levels, and changes in hatchery practices which might affect production. Information from prior year's fisheries will be reviewed to provide a calibration between past ocean management and resultant escapement. Past seasons will be reviewed in terms of season length, catch, fishing effort, relative stocks, abundance, and escapement level to determine relationships among catch levels, stock abundance, and spawning escapement. Based on established escapement goals and the factors outlined above, an appropriate level of harvest will be determined for each year's fishery. This desired catch level will be translated into a specific season structure based on the pattern of harvest over time, area distribution of catch, age structure of the population by time and area, expected redistribution of catch and effort following season adjustments in any time period or area, and management objectives for other chinook and coho stocks. The maximum season length off the Oregon coast will be May 1 through October 31. Seasons will be adjusted by time and area to maximize the harvest of mature fish of desired stocks while meeting escapement objectives. If additional restrictions are required to reduce mortality of immature chinook salmon, closures may be imposed during the period Septmeber 15 through October 31.

(e) *Chinook north of Cape Falcon.* Preseason abundance forecasts will be made for as many stocks in the unit as possible based upon the best available forecasting techniques and consistent with forecasts made to establish preseason management plans for inside fisheries. Recent years' catch, effort, and escapement levels will be used to estimate the expected harvest. When important viable stocks are known to be depressed, appropriate season and/or quotas may be developed using general indicators of relative abundance. Quotas may be apportioned to fishing periods and subareas in response to differential impacts upon stocks of concern. As acceptable monitoring tools are developed to estimate the actual harvest of specific stocks, a quota will be indentified for specific stocks rather than the total chinook harvest of all stocks. Each fishery will be managed during the season to ensure that the quota is not exceeded.

2. Allocation of ocean harvest levels.

(a) *Coho and chinook from the U.S.-Canada border to Cape Falcon.*

(i) Allocation of coho and chinook salmon north of Cape Falcon, Oregon, will be based on the following schedule:

Allowable annual non-treaty ocean coho harvest (thousands of fish)	Coho harvest percentage [1]		Chinook harvest percentage [1]	
	Commercial	Recreational	Commercial	Recreational
1 500	69	31	54	46
1,400	69	31	54	46
1,300	69	31	54	46
1,200	67	33	54	46
1,100	64	36	54	46
1,000	61	39	54	46
900	58	42	54	46
800	55	45	54	46
700	52	48	54	46
600	49	51	54	46
500	46	54	55.5	44.5
400	43	57	57	43
300	40	60	58.5	41.5
200	37	63	60	40
100	34	66	61.5	38.5
0	31	69	63	37

[1] For allowable coho harvests between the numbers shown, the allocations will be interpolated linearly. Species substitutions made at ocean harvest levels between 0 and 600,000 coho are intended to approximate an exchange ratio of four coho to one chinook, assuming a chinook harvest level of 182,000.

(ii) Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, State fishery needs, and spawning requirements.

(iii) If total allowable non-treaty ocean catch of coho for the area is less than 600,000, species substitution (chinook and coho) may be used to minimize hardship to either troll or recreational fisheries. Chinook equivalency for species substitution will be based upon an exchange ratio of four coho to one chinook. Every effort will be made to establish seasons and gear requirements which provide troll and recreational fleets a reasonable opportunity to catch the available harvest. In no event will species substitution exceed 25 percent of the allocations tabulated above.

(iv) The percentages presented above are averages for the entire area between Cape Falcon and the U.S.-Canada border. These percentages may be varied by major subareas if there is need to do so to protect the weak stocks. These deviations will be avoided where possible, and will be held to the minimum necessary to protect the stocks. In all cases, each major subarea, i.e., north of Leadbetter Point and south of Leadbetter Point, will retain at least 50 percent of the allocation that would have been established in the absence of transfer.

(b) *Coho south of Cape Falcon.* (i) Allocation of coho salmon south of Cape Falcon, Oregon will be based on the following schedule:

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage[1]	Number (thousands)	Percentage[1]
2,500	2,150.0	86.0	350.0	14.0
2,400	2,056.8	85.7	343.2	14.3
2,300	1,964.2	85.4	335.8	14.6
2,200	1,874.4	85.2	325.6	14.8
2,100	1,780.8	84.8	319.2	15.2
2,000	1,690.0	84.5	310.0	15.5
1,900	1,597.9	84.1	302.1	15.9
1,800	1,506.6	83.7	293.4	16.3
1,700	1,416.1	83.3	283.9	16.7
1,600	1,324.8	82.8	275.2	17.2
1,500	1,234.5	82.3	265.5	17.7
1,400	1,145.2	81.8	254.8	18.2
1,300	1,056.0	81.2	244.0	18.8
1,200	966.0	80.5	234.0	19.5
1,100	876.7	79.7	223.3	20.3
1,000	788.0	78.8	212.0	21.2
900	699.3	77.7	200.7	22.3
800	612.0	76.5	188.0	23.5
700	525.7	75.1	174.3	24.9
600	430.0	71.7	170.0	28.3
500	330.0	66.0	170.0	34.0
400	230.0	57.5	170.0	42.5
300	130.0	43.3	170.0	56.7
200	30.0	15.0	170.0	85.0
100	([2])	([2])	100.0	100.0

[1] For allowable coho harvests of 700,000 and above, the allocations will be interpolated linearly between the numbers shown.

[2] Incidental coho allowances associated with a directed chinook fishery would be deducted from the recreational catch. Incidental allowances could be in the form of estimated hooking mortality or actual landing allowances.

(ii) If the total allowable ocean harvest of coho is below 700,000, deviations from the above schedule may be made to minimize hardship to either troll or recreational fisheries by establishing subarea quotas, by establishing directed all-salmon-except-coho fisheries with incidental coho allowances, and by using other modifications in management measures which control relative impacts of troll and recreational gear on specific viable natural stocks.

(iii) Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

3. Management boundaries and zones.

Management boundaries and zones will be established or adjusted as necessary to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

4. Minimum harvest lengths.

The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially-caught salmon may be necessary for conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweight the detrimental impacts of harvesting immature fish.

5. Recreational daily bag limit.

Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of same combination of species. The recreational daily bag limit for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

6. Fishing gear restrictions.

Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or changed upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

7. Seasons.

(a) *In general.* Seasons for commercial, recreational, and treaty Indian fishing will be established or modified taking into account allowable ocean harvest levels (and quotas), allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(b) *Inseason adjustment.* Seasons are subject to inseason adjustment according to procedures described herein.

(c) *Commercial seasons.*

(i) No commercial fishery will open prior to May 1.

(ii) No commercial coho fishery north of the Oregon-California border will open prior to July 1.

(iii) No commercial chinook or coho fishery will extend after October 31.

(iv) Commercial seasons will be established or modified taking into account wastage of fish which cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas.

(v) All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinok or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(d) *Recreational seasons.* (i) No recreational fishery north of the Oregon-California border will open prior to May 1.

(ii) No recreational fishery for chinook or coho off California will open before the Saturday closest to February 15 nor extend after the Sunday closest to November 15.

(iii) If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

8. Quotas.

(a) Quotas for commercial, recreational, and treaty Indian fishing may be modified as necessary to ensure that allowable ocean harvests are not exceeded.

(b) Quotas are subject to inseason adjustment according to the procedures herein.

(c) Quotas may be used in conjunction with season established according to the procedures herein.

9. Selective fisheries.

In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

10. Treaty Indian fishing.

(a) The Secretary will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(b) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(c) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(d) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

III. INSEASON CHANGES TO MANAGEMENT MEASURES

A. *Fixed inseason management provisions.* The following inseason management provisions are not optional and will be used annually as appropriate without the need for Council action.

1. *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the FEDERAL REGISTER under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

2. *Rescission of automatic closure.* If, following the closing of a fishery after a quota is reached, it is discovered that the actual catch was overestimated and the season was closed prematurely, the Secretary is authorized to reopen the fishery if—

(a) The shortfall is sufficient to allow at least one full day's fishing (24 hours) based on the best information available concerning expected catch and effort; and

(b) The unused portion of the quota can be taken before the scheduled season ending.

The Secretary's decision to reopen a fishery will be based upon projections and estimates of catch by the Salmon Plan Development Team and will be made in consultation with the Council Chairman and Fisheries Directors of the affected States. If the fishery is reopened, its duration will be limited to complete fishing days (24 hour increments) and coordinated (to the extent possible) with State management agencies to assure that the quota is not exceeded.

3. *Adjustment for error in preseason estimates.* The Secretary may make changes in seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance have been identified, provided that such correction to a computational error can be made in a timely fashion to affect the involved fishery without disrupting the capacity to meet the objectives of the management plan. Such correction and adjustments to seasons and quotas will be based on a Council recommendation and Salmon Plan Development Team analysis.

B. *General procedures for optional inseason management provisions.*

1. In the course of its annual determination of whether management specifications should be modified for the season, the Council also will determine which one or more, if any, of the inseason actions enumerated below in Section III. C. should be employed to modify management measures during the season and will recommend same to the Secretary for implementation.

2. For those actions below, which the Council determines will be employed during the season, the following procedures will be followed:

(a) Prior to taking any inseason action the Regional Director will consult with the Chairman of the Council and the appropriate State Directors.

(b) As the actions are taken by the Secretary, the Regional Director will compile in aggregate form all data and other information relevent to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington.

(c) Inseason actions will be published by a notice in the FEDERAL REGISTER. In addition, the Regional Director and the Council will publish notice of the inseason action in local and regional news media.

(d) If the Secretary determines, for a good cause, that a notice must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

C. *Changes to Quotas and/or Fishing Seasons.* The Regional Director will make the following optional inseason adjustments to seasons and quotas only when the Council determines during the preseason regulatory process that (1) scientifically valid procedures can be used during the season to take the inseason action, and (2) such adjustments would not significantly increase the risk of not meeting the Council's management objectives.

1. *Private hatchery contributions.* The estimated contributions of private hatchery coho to coho quotas for the current year will be established during the preseason process of annually adjusting the regulations. During the season the Regional Director will review the estimated contributions of private hatchery coho, taking into account coded-wire tag and/or scale analysis data gathered during the season. If the contribution of private hatchery coho varies from the preseason estimates, the Secretary may modify coho quotas and seasons accordingly by publishing a FEDERAL REGISTER notice.

2. *Coho hooking mortality.* Approximately halfway through each regularly scheduled all-species season, the Regional Director will estimate the number of coho salmon that will be hooked and released during the all species seasons, and the Secretary may modify the commercial coho quotas and seasons accordingly by publishing a FEDERAL REGISTER notice.

3. *Revised abundance estimates.* During the season the Regional Director will monitor the actual salmon abundance compared to the preseason abundance estimates. If it appears that actual conditions of abundance and distribution of salmon, and of fishing effort and catches, differ from conditions anticipated prior to the all-species season in the pertinent management area, the Secretary may modify the estimate of abundance of any salmon species and any related quotas and seasons accordingly by publishing a FEDERAL REGISTER notice. Any inseason modification of salmon abundance estimates and related quotas and seasons will be consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan. In determining whether salmon abundance and quotas and/or seasons should be revised the Regional Director will consider:

(a) The number of participants, level and distribution of fishing effort, and salmon catches of the commercial and recreational fisheries compared to data from the same management area for similar time periods in prior years;

(b) Variations between preseason abundance estimates for the same area and abundance estimates as of the same date in prior years;

(c) Data from marked-fish recoveries, including analysis of recoveries of coho salmon with implanted coded-wire tags; and

(d) Any other scientific information relevant to the abundance and distribution of salmon stocks, total fishing effort, and catches that is available.

4. *Catches in the territorial sea.* The Regional Director will monitor salmon catches in the territorial sea (0-3 nautical miles) seaward of Washington, Oregon, and California. If the Regional Director determines that salmon catches have occurred in the territorial sea or a portion thereof which were not accounted for when the Federal quotas and seasons were established and which may cause the Federal quotas or the anticipated catch during the Federal seasons to be exceeded, the Secretary may reduce the Federal quotas or shorten the Federal seasons accordingly by publishing a FEDERAL REGISTER notice.

D. *Redistribution of Quotas.* The Secretary may redistribute a portion of one or more of the quotas during the season by publishing a FEDERAL REGISTER notice if the Regional Director determines that—

1. Redistribution between the commercial and recreational fisheries, or between areas in the same fishery, will increase the likelihood that an overall quota for a species will be achieved;

2. Redistribution is consistent with ocean escapement goals, conservation of the salmon resource, and any adjudicated Indian fishing rights; and

3. The redistribution is consistent with the ocean allocation scheme in the framework plan.

E. *Boundary Modifications.* The Secretary may modify one or more of the boundaries establishing fishery management areas during the season by publishing a FEDERAL REGISTER notice, if the Regional Director determines that one of the following circumstances exists, and the boundary modification is consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan:

1. A quota for one species will be reached before a quota for a different species in the same area, and the likelihood that the two quotas will be reached at or near the same time will be increased by modifying existing boundaries.

2. Attainment of a quota is jeopardized by an unanticipated shift in the location of the stocks or fishery to which it applies.

F. *Recreational Daily Bag Limit.* The Secretary may modify one or more of the daily bag limits during the season by publishing a FEDERAL REGISTER notice. Any such modification will be based on consideration of the following factors and will be consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan:

1. Predicted sizes of salmon runs.
2. Apparent actual sizes of salmon runs.
3. Recreational quota for the area.
4. Amount of the recreational, commercial, and treaty Indian catch of each species in the area to date.
5. Amount of the recreational, commercial, and treaty Indian fishing effort in the area to date.
6. Estimated average daily catch per fisherman.
7. Predicted recreational fishing effort for the area to the end of the scheduled season.
8. Other factors as appropriate.

IV. ESCAPEMENT GOALS

A. *Current escapement goals.*

The following specific escapement goals are in effect unless modified as provided herein. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

<table>
<tr><th>System</th><th>Spawning [1] escapement goal</th><th>Rebuilding schedule</th></tr>
<tr><td>Sacramento Fall Chinook [2]</td><td>Range of 122-180,000 for natural and hatchery</td><td></td></tr>
<tr><td>Klamath Fall Chinook</td><td>97,500 natural 17,500 hatchery</td><td>Achieve in-river run sizes (natural and hatchery combined) as follows<table><tr><td>1983-86</td><td>68,900</td></tr><tr><td>1987-90</td><td>82,700</td></tr><tr><td>1991-94</td><td>99,200</td></tr><tr><td>1995-98</td><td>115,000</td></tr></table></td></tr>
<tr><td>Oregon Coastal Chinook</td><td>150-200,000 natural</td><td></td></tr>
<tr><td>Columbia River Chinook</td><td></td><td></td></tr>
<tr><td>Upper-River Fall</td><td>40,000 bright adults above McNary Dam</td><td></td></tr>
<tr><td>Upper-River Summer</td><td>80,000 adults above Bonneville</td><td></td></tr>
<tr><td>Upper-River Spring</td><td>100-200,000 adults above Bonneville</td><td></td></tr>
<tr><td>Lower-River Spring (Williamette)</td><td>30-35,000</td><td></td></tr>
<tr><td>Columbia River and Oregon Costal Coho</td><td>575,000 OPI ocean escapement, 200,000 adult natural costal spawning escapement [3]</td><td>Achieve escapement of natural spawning stocks as follows<table><tr><th></th><th>Cycle 1</th><th>Cycle 2</th><th>Cycle 3</th></tr><tr><td>1983</td><td></td><td>140,000</td><td></td></tr><tr><td>1984</td><td></td><td></td><td>135,000</td></tr><tr><td>1985</td><td>175,000</td><td></td><td></td></tr><tr><td>1986</td><td></td><td>170,000</td><td></td></tr><tr><td>1987</td><td></td><td></td><td>200,00</td></tr></table></td></tr>
</table>

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT—*Continued*

			Cycle 1	Cycle 2	Cycle 3
		1988	200,000		
		1989		200,000	
Puget Sound Pink	900,000 natural				
Lake Washington Sockeye [4]	300,000 to Lake Washington				
Columbia River Sockeye [4]	80,000 over Priest Rapids				

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artifical production.

[2] The Sacremento River escapement goal is presented as a range within which annual escapements can be expected to vary. Achieving the upper end of the range, especially for the up-river chinook stocks, will be contingent upon solving the problems associated with the Red Bluff Diversion Dam.

[3] The long-term Klamath River escapement goal of 115,000 chinook is spawning escapement to which in-river harvest must be added to calculate the ocean escapement goal.

[4] These stocks represent a negligible component of the Washington ocean harvest.

B. *Modification of escapement goals.*

1. At any time during the year, the Team may conduct a comprehensive technical review of existing biological data to determine whether a change in escapement goals is warranted.

2. The Team will submit any recommendation for modifying an escapement goal with justification to the Council. The recommendation must be based on the best scientific information available and provide conclusive technical evidence to justify modification of an escapement goal.

3. If the recommendation for change is approved by the Council, the Secretary may change the escapement goal if he determines that such a change is justified.

4. Appropriate changes in escapement goals may be made in response to action by a Federal court without regard to the procedures listed above.

5. For Oregon coastal chinook, if the Oregon Department of Fish and Wildlife develops specific goals for north coast and south coast stocks within the overall goal, these changes may be made by the Secretary without regard to the procedures listed above.

6. Modification of escapement goals will be published by notice in the FEDERAL REGISTER under § 661.23.

[49 FR 43682, Oct. 31, 1984; 49 FR 46148, Nov. 23, 1984, as amended at 50 FR 813, Jan. 7, 1985; 50 FR 4978, Feb. 5, 1985]

EFFECTIVE DATE NOTE: At 50 FR 31849, Aug. 7, 1985, an emergency rule was issued amending the Appendix to Part 661, by adding a new paragraph G to Section III, effective from 0001 hours local time, August 2, 1985, until 2400 hours local time, October 31, 1985. For the convenience of the user, the emergency interim rule is set forth below.

APPENDIX

* * * * *

III. INSEASON CHANGES TO MANAGEMENT MEASURES

* * * * *

G. *Allowable Recreational Fishing Days Per Week.* The Secretary may modify the number of allowable fishing days per week during the season by publishing a FEDERAL REGISTER notice. Any such modification will be based on consideration of the following factors and will be consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework plan:

1. Predicted sizes of salmon runs.
2. Apparent actual sizes of salmon runs.
3. Recreational quota for the area.
4. Amount of the recreational, commercial, and treaty Indian catch of each species in the area to date.
5. Amount of the recreational, commercial, and treaty Indian fishing effort in the area to date.
6. Estimated average daily catch per fisherman.
7. Predicted recreational fishing effort for the area to the end of the scheduled season.
8. Other factors as appropriate.

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PART 662—NORTHERN ANCHOVY FISHERY

Subpart A—General

Sec.

662.1 Purpose and scope.
662.2 Definitions.
662.3 Relation to other laws.
662.4 Recordkeeping and reporting.
662.5 Vessel identification.
662.6 Prohibitions.
662.7 Enforcement.
662.8 Penalties.

Sec.

Subpart B—Management Measures

662.20 Harvest quota
662.21 Closures.
662.22 Fishing seasons.
662.23 Closed areas.
662.24 Gear limitations.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 9572, Mar. 14, 1984, unless otherwise noted.

Subpart A—General

§ 662.1 Purpose and scope.

This part governs fishing for northern anchovy by vessels of the United States in the Pacific anchovy fishery area (PAFA). These regulations implement the Northern Anchovy Fishery Management Plan (FMP) developed by the Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended.

§ 662.2 Definitions.

For the purpose of this part, the following terms mean—

Anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Council means the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal or plant life other than marine mammals, birds and highly migratory species of tuna.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other water craft which is used for, equipped to be used for, or of a type which is normally used for fishing, except for seine skiffs which are an integral part of fishing operations conducted under this part.

Fishing year means a 12-month period beginning August 1 and extending through July 31 of the following year.

Live bait fishery means fishing for northern anchovies for use as live bait in other fisheries.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, Pub. L. 94-265 (16 U.S.C. 1801 *et seq.*) as amended.

Nonreduction fishery means fishing for northern anchovies for use as dead bait or providing fish for human consumption.

Northern anchovy means fish of the species *Engraulis mordax*, or parts or products thereof.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

PAFA means the Pacific anchovy fishery area which is the FCZ seaward of California, and between 38° N. latitude (Point Reyes) and the United States-Mexico International Boundary which is a line connecting the following coordinates:

32°35′22″ N. latitude, 117°27′49″ W. longitude
32°37′37″ N. latitude, 117°49′31″ W. longitude
31°07′58″ N. latitude, 118°36′18″ W. longitude
30°32′31″ N. latitude, 121°51′58″ W. longitude

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, of foreign government or entity of any such government.

Reduction fishery means fishing for northern anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, or other fishery products or byproducts for purposes other than direct human consumption.

Reduction harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

Spawning biomass means the estimated amount, by weight, of all sexually mature northern anchovies in the central subpopulation (defined as) from 38° N. latitude (Point Reyes) south to approximately 30° N. latitude at Punta Baja, Baja California.

Special allocations means that part of the total harvest quota reserved for nonreduction fishing, reduction fishing in subarea A, and any conservation purpose.

Subarea A means the northern portion of the PAFA between 38° N. latitude (Point Reyes), and a southern limit at 35°14′ N. latitude (Point Buchon).

Subarea B means the southern portion of the PAFA between 35°14′ N. latitude (Point Buchon), and the United States-Mexico International Boundary described in this section.

Subarea B harvest quota means the amount of anchovies, by weight, which may be harvested during a fishing year for reduction purposes in Subarea B.

Total harvest quota means the total amount of anchovies, by weight, which may be harvested during a fishing year by the reduction and nonreduction fisheries.

§ 662.3 Relation to other laws.

These regulations recognize that any State law which pertains to vessels registered under the laws of that State while fishing in the FCZ and which is consistent with the Federal Regulations shall continue to have force and effect on fishing activities addressed by these regulations.

§ 662.4 Recordkeeping and reporting.

Data regarding fishing vessels, fishing activities, landings and processing activities required by the FMP for the reduction and nonreduction fisheries are collected by the State of California under existing data collection provisions. No additional reports will be required of fishermen or processors as long as the data collection and reporting systems operated by the State of California continue to provide the Secretary with statistical information adequate for management. Reporting requirements may be promulgated by emergency regulations if this reporting system becomes inadequate for management purposes.

§ 662.5 Vessel identification.

(a) *Official number.* Each fishing vessel in the reduction fishery must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather

[illegible] ABLE

deck so as to be visible from enforcement vessels and aircraft. The official number is the anchovy reduction registration number issued by the State of California.

(b) *Numerals.* The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height. Markings must be legible and of a color that contrasts with the background.

(c) *Declaration.* If a vessel has filed with the State of California a declaration of intent to take anchovies for reduction purposes, it will be conclusively presumed that any fishing for anchovies by that vessel is for reduction purposes unless an exemption to the declaration has been filed with the State of California.

§ 662.6 Prohibitions.

It is unlawful for any person to—

(a) Fish for anchovies in the PAFA: (1) During any applicable closed season or in any applicable closed area specified in this part;

(2) During any applicable closure specified in this part; or

(3) Aboard a fishing vessel which has not filed an applicable declaration of intent with the State of California;

(b) Take or retain anchovies for reduction purposes in the PAFA unless they are taken with authorized fishing gear as specified in § 662.24;

(c) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any anchovy which was taken in violation of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act;

(d) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act;

(e) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in enforcing provisions of this part;

(f) Resist a lawful arrest for any act prohibited by this part;

(g) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by this part;

(h) Fail to comply immediately with instructions issued by authorized officers to facilitate safe boarding and inspection of the vessel as required by procedures specified under § 662.7; or

(i) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act.

§ 662.7 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes

prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 662.8 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 662.20 Harvest quota.

(a) *Announcement of harvest quotas.* The total harvest quota, reduction harvest quota, subarea B harvest quota, and special allocations will be determined by the Regional Director from the estimated spawning biomass according to the formulas in paragraph (b) of this section. An announcement of the estimated spawning biomass and preliminary determination of harvest quotas will be made by notice in the FEDERAL REGISTER on or about July 1 each year. Opportunity for public comment will be provided in the preliminary announcement. A final announcement of harvest quotas and special allocations will be made by notice in the FEDERAL REGISTER on or about August 1 of each year.

(b) *Determination of harvest quotas.* The total harvest quota in the PAFA will be determined by adding the nonreduction fishery allocation in the PAFA and the reduction harvest quota in the PAFA which will be separately determined by the following formulas. There is no harvest quota in the PAFA for the live bait fishery.

(1) When the estimated spawning biomass is less than 300,000 mt, there will be no reduction harvest quota and

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

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the nonreduction allocation in the PAFA will be 4,900 mt.

(2) When the estimated spawning biomass is equal to or greater than 300,000 mt, the reduction harvest quota in the PAFA will be 70 percent of the estimated spawning biomass in excess of 300,000 mt or 140,000 mt, whichever is less, and the nonreduction fishery allocation in the PAFA will be 4,900 mt except as specified in § 662.21(b).

(c) *Subarea B harvest quota.* The reduction harvest quota for subarea B will be equal to the reduction harvest quota in the PAFA minus a reserve of 10 percent of the reduction harvest quota or 9,072 mt, whichever is less. This reserve is allocated to the reduction fishery in subarea A except as provided in paragraph (d) of this section.

(d) *Reallocation of subarea A reserve.* The Secretary may reallocate on June 1 from subarea A to subarea B that portion of the reserve allocated to subarea A under paragraph (c) of this section which will not be harvested in subarea A by the end of the fishing year. This amount will be estimated based on catch to date in the current year and the expected intentions of processors and fishermen in the reduction fishery north of Point Buchon to harvest anchovies in the remaining fishing year. Reallocation under this paragraph will be based first, on a need to increase the subarea B harvest quota and secondly, on the projected reduction harvest in subarea A to the end of the fishing year.

(e) *Procedure for reallocation of subarea A reserve.* (1) The Secretary may, by May 1 each year, determine the need to increase the subarea B harvest quota as provided in paragraph (d) of this section if the expected reduction fishery harvest in subarea B is an amount equal to or greater than the subarea B harvest quota. After making a determination that the subarea B harvest quota needs to be increased as provided in paragraph (d) of this section, the Secretary will make the estimate under paragraph (d) of this section on or about May 15 and, as soon as practicable after June 1, announce to all reduction fishing vessel owners and operators and licensed anchovy reduction plant operators by notice in the FEDERAL REGISTER and other appropriate notice—

(i) The change in the subarea B quota;

(ii) The reasons for the change; and

(iii) A summary of, and responses to, any comments submitted under paragraph (e)(3) of this section.

(2) The Regional Director will compile in aggregate form all data used to make the estimates under paragraph (d) of this section and make them available for public inspection during normal business hours at the Southwest Regional Office, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(3) Comments from the public on the estimates made under paragraph (d) of this section may be submitted to the Regional Director until May 31.

(f) Anchovies harvested for reduction and nonreduction purposes in the PAFA and adjacent territorial sea will be counted toward the total harvest quota.

§ 662.21 Closures.

(a) *Closure of the reduction fishery.* The Secretary will close the reduction fishery during the open season provided in § 662.22 when the total harvest quota in the PAFA is taken. The Secretary will close only the reduction fishery in subarea B when the subarea B reduction harvest quota is taken.

(b) *Closure of the nonreduction fishery.* The Secretary will close the nonreduction fishery in the PAFA only if the total harvest quota is taken.

(c) *Procedure for closing.* (1) When the harvest quotas prescribed in § 662.20 are about to be taken, the Secretary will announce, by notice in the FEDERAL REGISTER and to the Council and the California Department of Fish and Game, the date of closure in one or both subareas.

(2) If a reduction fishery closure is announced, the reduction fishery in the affected subarea will cease on the date of closure specified in the FEDERAL REGISTER notice provided by paragraph (c)(1) of this section, and will not resume until a final determination

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of new harvest quotas is announced under § 662.20.

(3) The nonreduction fishery in the PAFA ceases on the date that a total harvest quota closure is announced under paragraph (c)(1) of this section, and will not resume until a new harvest quota is announced under § 662.20.

§ 662.22 Fishing seasons.

All open seasons will begin at 0001 hours and terminate at 2400 hours local time. The PAFA is closed to anchovy fishing except as follows:

(a) *Nonreduction fishing season.* The open season for nonreduction fishing in the PAFA is from August 1 to July 31.

(b) *Reduction fishing season.* (1) In subarea A, the open season for reduction fishing in the PAFA is from August 1 to June 30; and

(2) In subarea B, the open season for reduction fishing in the PAFA is from September 15 to June 30.

§ 662.23 Closed areas.

(a) *Nonreduction fishery.* There are no closed areas for nonreduction fishing in the PAFA.

(b) *Reduction fishery.* The following areas are closed to reduction fishing: (1) *Farallon Islands closure* (see Figure 1). The portion of subarea A bounded by—(i) A straight line joining Pigeon Point Light (37°10.9′ N. latitude, 122°23.3′ W. longitude) and the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. latitude, 123°00.1′ W. longitude); and

(ii) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. latitude, 123°00.1′ W. longitude) and the U.S. navigation light on Point Reyes (37°59.7′ N. latitude, 123°01.3′ W. longitude).

(2) *Subarea B closures* That portion of subarea B described as—

(i) *Oxnard closure.* (see Figure 1). The area that extends offshore four (4) miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4′ N. latitude, 119°15.0′ W. longitude) and 220° true from the steam plant stack at Ormond Beach (34°07.8′ N. latitude, 119°10.0′ W. longitude).

(ii) *Santa Monica Bay closure* (see Figure 1). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8′ N. latitude, 188°40.8′ W. longitude) to Rocky Point (Palos Verdes Point) (33°46.5′ N. latitude, 118°25.7′ W. longitude).

(iii) *Los Angeles Harbor closure* (see Figure 1). The area outside Los Angeles Harbor described by a line extending six miles 180° true from Point Fermin (33°42.3′ N. latitude, 118°17.6′ W. longitude) and then to a point located three (3) miles offshore on a line 225° true from Huntington Beach Pier (33°39.2′ N. latitude, 118°00.3′ W. longitude)

(iv) *Oceanside to San Diego closure* (see Figure 1). The area six (6) miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4′ N. latitude, 117°24.1′ W. longitude) of Oceanside Harbor to the United States-Mexico International Boundary.

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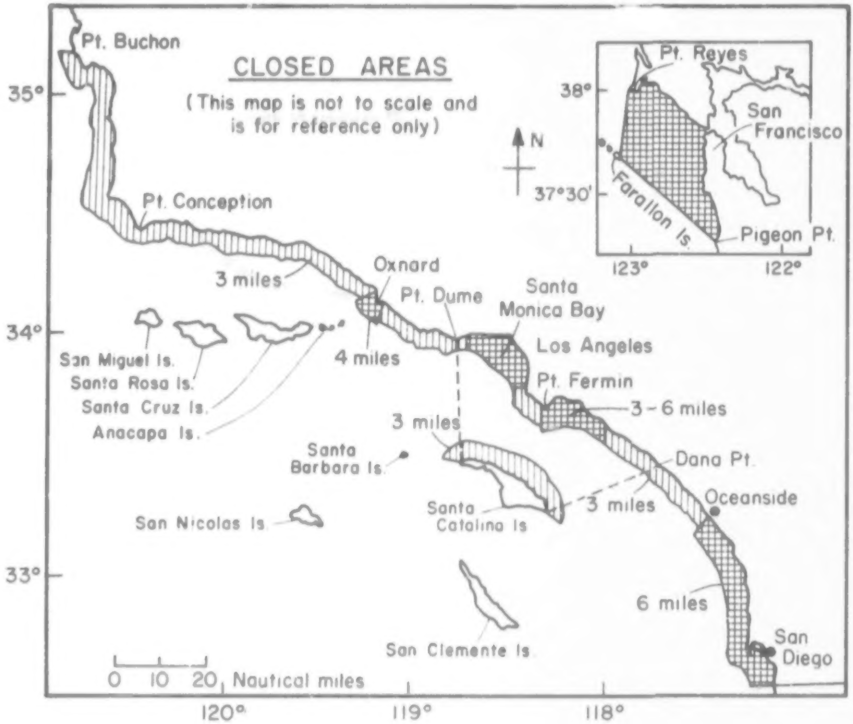
CLOSED AREAS
(This map is not to scale and is for reference only)
N
Pt. Buchon
Pt. Conception
3 miles
Oxnard
4 miles
Pt. Dume
Santa Monica Bay
Los Angeles
Pt. Fermin
3 - 6 miles
3 miles
Dana Pt.
3 miles
Oceanside
6 miles
San Diego
San Miguel Is.
Santa Rosa Is.
Santa Cruz Is.
Anacapa Is.
Santa Barbara Is.
San Nicolas Is.
Santa Catalina Is
San Clemente Is.
Pt. Reyes
San Francisco
Farallon Is.
Pigeon Pt.
38°
37°30'
123°
122°
35°
34°
33°
120°
119°
118°
0 10 20 Nautical miles

Figure 1. Existing California area closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines).

§ 662.24 Gear limitations.

(a) *Nonreduction fishery.* There are no limitations on gear used in the nonreduction fishery.

(b) *Reduction fishery.* Authorized fishing gear only may be used in the reduction fishery. Beginning on April 1, 1986, authorized fishing gear will be round haul nets which have a minimum wet-stretch mesh size of $^{10}/_{16}$ of an inch excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of two meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel, and will be no wider than $^{10}/_{16}$ of an inch less one thickness of the metal at the widest part.

PART 663—PACIFIC COAST GROUNDFISH FISHERY

Subpart A—General Provisions

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663.3 Relation to other laws.
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Subpart B—Management Measures

663.21 General limitations.
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663.26 Gear restrictions.
663.27 Catch restrictions.
663.28 Restrictions on other fisheries.
663.29 Scientific research.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 47 FR 43974, Oct. 5, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 663.1 Purpose and scope.

(a) The regulations in this part govern fishing for groundfish by fishing vessels of the United States in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California.

(b) Regulations governing fishing for groundfish by fishing vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and § 611.70.

(c) These regulations implement the Pacific Coast Groundfish Plan developed by the Pacific Fishery Management Council for groundfish fisheries off the coasts of Washington, Oregon, and California.

§ 663.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings (some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations):

Acceptable biological catch (ABC) means a seasonally determined catch that may differ from maximum sustainable yield (MSY) for biological reasons.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commercial fishing means fishing by a person in possession of a valid personal State commercial fishing license, or fishing by a person on a vessel which also has aboard a person in possession of a valid personal State commercial fishing license.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management area means the fishery conservation zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fishing means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.
This term does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing gear:

(a) *Bobbin trawl* means the same as a roller trawl.

(b) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes Danish and Scottish seine gear.

(c) *Chafing gear* means webbing or other material attached to the bottom (underside) or around the codend of a trawl net to protect the codend from wear.

(d) *Codend* means the terminal, closed end of a trawl net.

(e) *Double-ply mesh* means double twine tied into a single knot.

(f) *Double-walled codend* means a codend constructed of two walls of webbing.

(g) *Gillnet* means a single-walled, rectangular net which is set upright in the water.

(h) *Hook-and-line* means one or more hooks attached to one or more lines.

(i) *Longline* means a stationary, buoyed, and anchored groundline with hooks attached.

(j) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed.

(k) *Pot* means a trap.

(l) *Roller trawl* means a trawl net with foot[illegible] equipped with rollers or bobb[illegible]de of wood, steel, rubber, pl[illegible]r other hard material which keep the footrope above the seabed thereby protecting the net.

(m) *Set net* means a stationary, buoyed, and anchored gillnet or trammel net.

(n) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-ply mesh.

(o) *Spear* means a sharp, pointed, or barbed instrument on a shaft.

(p) *Trammel net* means a gillnet made with two or more walls joined to a common float line.

(q) *Trap* means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(r) *Trawl mesh size* means the distance between the inside of one knot and the inside of the opposing knot in the trawl mesh.

(s) *Trawl net* means a cone or funnel-shaped net which is towed through the water by one or two vessels.

(t) *Trawl riblines* means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing year means the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the Pacific Coast Groundfish Plan, specifically:

COMMON NAME AND SCIENTIFIC NAMES

Sharks:
leopard shark, *Triakis semifasciata*
soupfin shark, *Galeorhinus zyopterus*
spiny dogfish, *Squalus acanthias*
Skates:
big skate, *Raja binoculata*
California skate, *R. inornata*
longnose skate, *R. rhina*
Ratfish: ratfish, *Hydrolagus colliei*
Morids: finescale codling, *Antimora microlepis*
Grenadiers: Pacific rattail, *Coryphaenoides acrolepis*
Roundfish:
cabezon, *Scorpaenichthys marmoratus*
*jack mackerel (north of 39° N. latitude), *Trachurus symmetricus*
kelp greenling, *Hexagrammos decagrammus*
lingcod, *Ophiodon elongatus*

Pacific cod, *Gadus macrocephalus*
*Pacific whiting, *Merluccius productus*
*sablefish, *Anoplopoma fimbria*
Rockfish:
aurora rockfish, *Sebastes aurora*
bank rockfish, *S. rufus*
black rockfish, *S. melanops*
black and yellow rockfish, *S. chrysomelas*
blackgill rockfish, *S. melanostomus*
blue rockfish, *S. mystinus*
bocaccio, *S. paucispinis*
bronzespotted rockfish, *S. gilli*
brown rockfish, *S. auriculatus*
calico rockfish, *S. dalli*
California scorpionfish, *Scorpaena guttata*
canary rockfish, *Sebastes pinniger*
chilipepper, *S. goodei*
China rockfish, *S. nebulosus*
copper rockfish, *S. caurinus*
cowcod, *S. levis*
darkblotched rockfish, *S. crameri*
dusty rockfish, *S. ciliatus*
flag rockfish, *S. rubrivinctus*
gopher rockfish, *S. carnatus*
grass rockfish, *S. rastrelliger*
greenblotched rockfish, *S. rosenblatti*
greenspotted rockfish, *S. chlorostictus*
greenstriped rockfish, *S. elongatus*
harlequin rockfish, *S. variegatus*
honeycomb rockfish, *S. umbrosus*
kelp rockfish, *S atrovirens*
longspine thornyhead, *Sebastolobus altivelis*
Mexican rockfish *Sebastes macdonaldi*
olive rockfish, *S. serranoides*
*Pacific ocean perch, *S. alutus*
pink rockfish, *S. eos*
quillback rockfish, *S. maliger*
redbanded rockfish, *S. babcocki*
redstripe rockfish, *S. proriger*
rosethorn rockfish, *S. helvomaculatus*
rosy rockfish, *S. rosaceus*
rougheye rockfish, *S. aleutianus*
sharpchin rockfish, *S. zacentrus*
*shortbelly rockfish, *S. jordani*
shortraker rockfish, *S. borealis*
shortspine thornyhead, *Sebastolobus alascanus*
silvergray rockfish, *Sebastes brevispinis*
speckled rockfish, *S. ovalis*
splitnose rockfish, *S. diploproa*
squarespot rockfish, *S. hopkinsi*
starry rockfish, *S. constellatus*
stripetail rockfish, *S. saxicola*
tiger rockfish, *S. nigrocinctus*
treefish, *S. serriceps*
vermilion rockfish, *S. miniatus*
*widow rockfish, *S. entomelas*
yelloweye rockfish, *S. ruberrimus*
yellowmouth rockfish, *S. reedi*
yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera and *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*.

Flatfish:
arrowtooth flounder [arrowtooth turbot], *Atheresthes stomias*
butter sole, *Isopsetta isolepis*
curlfin sole, *Pleuronichthys decurrens*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
petrale sole, *Eopsetta jordani*
rex sole, *Glyptocephalus zachirus*
rock sole, *Lepidopsetta bilineata*
sand sole, *Psettichthys melanostictus*
starry flounder, *Platichthys stellatus*

NOTE: Only those species marked with an asterisk (*) have a numerical OY; the others are in the "other species" complex. See § 663.21.

Incidental catch or *incidental species* means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended.

Maximum sustainable yield (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Pacific Coast Groundfish Plan means the fishery management plan (FMP) for the Washington, Oregon, and California groundfish fishery developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce on January 4, 1982, and as it may be subsequently amended.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Northwest Regional Director, National Marine Fishereis Service, acting upon the recommendation of the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Secretary means the Secretary of Commerce or the person(s) to whom appropriate authority has been delegated.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, which may be landed from a single fishing trip. All weights are in round weight (the weight of the whole fish) unless specified otherwise.

Vessel of the United States means (a) a vessel documented or numbered by the U.S. Coast Guard under U.S. law; or (b) a vessel, under five net tons, which is registered under the laws of any State.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27519, July 5, 1984]

§ 663.3 Relation to other laws.

(a) *Federal laws*—(1) *Pacific halibut.* Fishing for Pacific halibut is governed by the regulations promulgated by the International Pacific Halibut Commission and approved by the United States (see Part 301 of this title).

(2) *Salmon.* Fishing for salmonids in the Pacific Fishery Management Council's fishery management area is governed by Federal regulations at Part 661 of this title. Fishing for pink and sockeye salmon between 48°00 N. latitude and the Provisional International Boundary between the United States and Canada (United States Convention waters) is governed by the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System as amended by the Pink Salmon Protocol (see Part 371 of this title).

(3) *Anchovy.* Fishing for northern anchovy in the Pacific Fishery Management Council's Pacific Anchovy Fishery Area (south of 38°00′ N. latitude) is governed by Federal regulations at Part 662 of this title.

(b) *State laws.* This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the Pacific Coast Groundfish Plan, including any State landing law, shall continue in effect with respect to fishing activities regulated under this part.

[47 FR 43974, Oct. 5, 1982; 48 FR 3623, Jan. 26, 1983]

§ 663.4 Reports.

This part recognizes that catch and effort data necessary for implementing the Pacific Coast Groundfish Plan are collected by the States of Washington, Oregon, and California under existing State data collection requirements. Telephone surveys of domestic industry (see § 611.70(d) and § 663.24) will be conducted biannually by the National Marine Fisheries Service to determine amounts of fish which will be made available to foreign fishing and joint venture processing. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

(Approved by the Office of Management and Budget under control number 0648-0114)

[47 FR 43974, Oct. 5, 1982, as amended at 48 FR 34762, Aug. 1, 1983]

§ 663.5 Management subareas.

(a) The fishery management area is divided into five subareas for the regulation of groundfish fishing, with the following designations and boundaries:

(1) *Vancouver.* (i) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Colombia (at 48°35'75" N. latitude, 124°43'00" W. longitude) south of the International Boundary between the United States and Canada (at 48°29'37.19" N. latitude, 124°43'33.19" W. longitude), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) Northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N latitude	W longitude
1	48°29'37.19"	124°43'33.19"
2	48°30'11"	124°47'13"
3	48°30'22"	124°50'21"
4	48°30'14"	124°54'52"
5	48°29'57"	124°59'14"
6	48°29'44"	125°00'06"
7	48°28'09"	125°05'47"
8	48°27'10"	125°08'25"
9	48°26'47"	125°09'12"
10	48°20'16"	125°22'48"
11	48°18'22"	125°29'58"
12	48°11'05"	125°53'48"
13	47°49'15"	126°40'57"
14	47°36'47"	127°11'58"
15	47°22'00"	127°41'23"
16	46°42'05"	128°51'56"
17	46°31'47"	129°07'39"

(iii) Southern limit: 47°30' N. latitude.

(2) *Columbia.* (i) Northern limit: 47°30' N. latitude; (ii) Southern limit: 43°00' N. latitude.

(3) *Eureka.* (i) Northern limit: 43°00' N. latitude; (ii) Southern limit: 40°30' N. latitude.

(4) *Monterey.* (i) Northern limit: 40°30' N. latitude; (ii) Southern limit: 36°00' N. latitude.

(5) *Conception.* (i) Northern limit: 36°00' N. latitude; (ii) Southern limit: The United States-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N latitude	W longitude
1	32°35'22"	117°27'49"
2	32°37'37"	117°49'31"
3	31°07'58"	118°36'18"
4	30°32'31"	121°51'58"

(b) Any person fishing subject to this part is bound by the above-described international boundaries, nothwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(c) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(d) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983]

§ 663.6 Vessel identification.

(a) *Display.* The operator of a vessel which is over 25 feet in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block arabic numerals at least 18 inches high for vessels over 65 feet long and at least 10 inches high for vessels between 25 and 65 feet in length. The length of a vessel for purposes of this section is the length set forth in U.S. Coast Guard records or in State records if no U.S. Coast Guard record exists.

(b) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish shall keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(c) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

[49 FR 27520, July 5, 1984]

§ 663.7 General prohibitions.

It is unlawful for any person:

(a) To possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import, or export any groundfish taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(b) To refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(c) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (b) of this section;

(d) To resist a lawful arrest for any act prohibited by this part;

(e) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(f) To interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act;

(g) To transfer, or attempt to transfer, directly or indirectly, any U.S.-harvested groundfish to any foreign fishing vessel within the FCZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(h) To sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing;

(i) To retain any species of salmonid or Pacific halibut caught by means of fishing gear authorized under this part unless authorized by 50 CFR Parts 301, 371 or 661;

(j) To falsify or fail to affix and maintain vessel and gear markings as required by § 663.6;

(k) To fail to comply immediately with enforcement and boarding procedures specified in § 663.8;

(l) To fish for groundfish in violation of any terms or conditions attached to an EFP under § 663.10;

(m) To fish for groundfish using gear not authorized under § 663.26, or under an EFP issued under § 663.10;

(n) To take and retain, or land more groundfish than specified under § 663.27, § 663.28, or under an EFP issued under § 663.10;

(o) To violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983]

§ 663.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 663.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

§ 663.10 Experimental fisheries.

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of groundfish managed by the pacific Coast Groundfish Plan which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

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(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(Approval by Office of Management and Budget not required, under 44 U.S.C. 3506(c)(5)).

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the Federal Register with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agencies of Oregon, Washington, California, and Idaho, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Pacific Fishery Management Council and the Directors of the State fishery management agencies concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the Pacific Coast Groundfish Plan; or

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(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the Pacific Coast Groundfish Plan.

(d) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) *Sanctions* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, a notice issued under Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, shall be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D, or 50 CFR Part 621.

(Approved by the Office of Management and Budget under control number 0648-0097 is pending)

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 48 FR 57302, Dec. 29, 1983]

Subpart B—Management Measures

§ 663.21 General limitations.

(a) *Optimum yield.* (1) Numerical optimum yields (OYs) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and jack mackerel (north of 39°00′ N. latitude) in the regulatory subareas are published in the FEDERAL REGISTER. OYs for those six species are the maximum amount which may be retained or landed shoreside each year in the fishery management area or relevant subarea and include fish caught in the territorial sea (0-3 nautical miles). The "other species" complex has no numerical OY and is regulated by the gear, area, and catch restrictions set forth in this Subpart B.

(2) The OY for sablefish in the Monterey subarea pertains to that part of the subarea between 37°00′ N. latitude and 36°30′ N. latitude only. The OY for sablefish for the remainder of the Monterey subarea is included in the "Total OY" for sablefish.

(3) Pacific ocean perch are categorized as "other species" in the Eureka, Monterey, and Conception subareas. This species is not common or important in these subareas. Accordingly, the OY for Pacific ocean perch applies

only to the Vancouver and Columbia subareas.

(b) *Notice of closure.* If the Secretary determines that the numerical OY for any species in the fishery management area or in any regulatory subarea will be reached during the fishing year, the Secretary will publish a notice of closure under the provisions of § 663.23, prohibiting retention or landing of that species caught in the fishery management area or in the applicable regulatory subarea.

[47 FR 43974, Oct. 5, 1982, as amended at 49 FR 27520, July 5, 1984]

§ 663.22 Inseason adjustments.

(a) *Reduction of fishing levels.* (1) Except as otherwise provided by Section 305(e) of the Magnuson Act, after receiving a recommendation and written report by the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species or species complex. Biological stress may exist when:

(i) Exploitable biomass or spawning biomass is below a level expected to produce MSY for a species or species complex;

(ii) Recruitment is substantially below replacement level;

(iii) Fishing mortality rate exceeds that required to take ABC for the calendar year;

(iv) Catch for the calendar year is projected to exceed the best current estimate of ABC; or

(v) Any other abnormality in the biological characteristics of the species or species complex is discovered, such as changes in age composition, size composition, or age at maturity.

(2) A public hearing will be held before any determination that continued fishing at current levels would result in biological stress to any species or species complex, and before publishing any notice reducing fishing levels on any species or species complex.

(3) In issuing any notice reducing fishing levels under this paragraph, the Secretary may adjust the management measures in this part. Adjustments to management measures may include: size, trip, and bag limits; termination of directed and/or incidental harvest by foreign or domestic fishermen, or both, of a species or species complex; area and subarea closures; time closures; gear limitations; and quotas. To the extent practicable, adjustments to management measures will be consistent with the objectives and priorities of the Pacific Coast Groundfish Plan.

(b) *Increase in numerical OYs.* (1) After receiving a recommendation and written report from the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to increase the numerical OY for any species during the fishing year, if it is determined that such increase would not cause biological stress to that or any other species and would promote full utilization of the groundfish resource. The Secretary will consider the following in making the determination:

(i) Exploitable biomass and spawning biomass relative to MSY levels for the species under consideration;

(ii) Fishing mortality rate relative to MSY levels for the species under consideration;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches relative to ABC;

(v) In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch;

(vi) The impact, if any, of the proposed increase in OY on other species.

(2) A public hearing will be held before any determination is made which forms the basis for an increase to a numerical OY and before the Secretary publishes any notice to implement such increase.

(3) The sum of any increases to a numerical OY during a single fishing year may not exceed 30 percent of the OY for that species at the beginning of the fishing year.

(c) *Modifications to catch restriction for Pacific ocean perch.* (1) Catch restrictions applicable to Pacific ocean perch are specified at § 663.27(b)(2). After receiving a recommendation and written report from the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to modify these catch restrictions if it is determined that such modification is necessary to achieve the OY based on the 20-year rebuilding schedule.

(2) A public hearing will be held before any determination is made that modification of catch restrictions applicable to Pacific ocean perch is necessary to achieve OY, and before the Secretary publishes any notice to implement such modification.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 2[illegible] 1983, as amended at 49 FR 27520, July 5, 1984]

§ 663.23 Notices.

(a) The Secretary shall publish the notices described in § 663.21, § 663.22 or § 663.27 in proposed form in the Federal Register for public comment, unless the Secretary finds for good cause that such notice and public review are impracticable, unnecessary, or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed notice is based will be available for public inspection at the Regional Office during business hours.

(b) If the Secretary determines, for good cause, that a notice described in § 663.21, § 663.22, or § 663.27(b)(3) must be issued without affording a prior opportunity for public comment, public comments on the notice shall be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(c) Any notice issued under this section will not be effective until 30 days after publicaation in the Federal Register unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(d) Notices issued under this section will emain in effect until the expiration date stated in the published notice or until rescinded, modified, or superseded.

(e) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under Section 305(e) of the Magnuson Act.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983]

§ 663.24 Annual adjustments.

(a) Each year, the Secretary will publish a notice in the Federal Register specifying optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and jack mackerel (north of 39°00′ N. latitude). The Secretary may publish season and area restrictions, incidental catch and receipt allowance restrictions, and any other restrictions, for any TALFF or JVP amount that may be specified for species other than Pacific whiting. The Secretary also will publish the annual ABCs for groundfish in the Federal Register. Annual specifications of numerical OYs and ABCs by the Secretary will not exceed by more than 30 percent the OYs and ABCs specified at the beginning of the previous fishing year.

(b) *Procedures*—(1) *Preliminary specifications.* On November 1, or as soon as practicable thereafter, the Secretary will make and publish in the Federal Register preliminary specifications for the next calendar year as described in paragraph (a) of this section. The Secretary will consult with the Pacific Fishery Management Council and consider the following factors in making the preliminary specifications:

(i) Results of a survey of domestic processors and joint venture operations to estimate processing capacity and planned utilization;

(ii) Results of a survery of fishermen's trade associations to estimate fishing capacity and planned utilization; and

(iii) Relevant scientific information.

(2) *Final specifications.* On December 1, or as soon as practicable thereafter, the Secretary will make final specifications for the next calendar year as described in paragraph (a) of this section. The Secretary will con-

sult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (b)(4) of this section, all factors considered in making the preliminary determinations under paragraph (b)(1) of this section, and additional relevant information. The final specifications will be published as a notice in the FEDERAL REGISTER on or about December 1 with the reason for the specifications.

(3) *Availability of data.* All data relevant to the preliminary and final specifications under paragraphs (b)(1) and (b)(2) of this section will be compiled in aggregate form and will be available for public review at the office of the Regional Director during the public comment period.

(4) *Public comment.* Comments from the public that are relevant to the preliminary and final specifications in paragraphs (b)(1) and (b)(2) of this section may be submitted to the Secretary until December 1 or as specified in the FEDERAL REGISTER.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27520, July 5, 1984]

§ 663.25 Season. [Reserved]

§ 663.26 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: bottom trawl, hook-and-line, longline, pelagic trawl, pot or trap, roller or bobbin trawl, set net, spear, trammel net, and trawl net.

(b) *Trawl gear*—(1) *Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum sizes set forth below. The minimum sizes apply to the last fifty meshes running the length of the net to the terminal (closed) end of the codend. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh in the codend.

MINIMUM TRAWL MESH SIZE (IN INCHES)

Trawl type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Roller or bobbin	3.0	3.0	3.0	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

(3) *Chafing gear.* (i) Chafing gear must not be connected directly to the terminal (closed) end of the codend.

(ii) In all bottom trawls, chafing gear must have a minumum mesh size of 15 inches, unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(iii) In roller and bobbin trawls in the Vancouver, Columbia, and Eureka subareas, and all pelagic trawls, chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches.

(4) *Double-walled codends.* (i) Double-walled codends must not be used in any pelagic trawl, or in any other trawl with mesh size less than 4.5 inches.

(ii) The double-walled layers of the codend must be the same mesh size and coincide knot to-knot, and must not be longer than 25 trawl meshes or 12 feet, whichever is greater.

(5) *Bottom trawls.* A net used in a bottom trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch mesh size.

(6) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth (without rollers or bobbins). Sweeplines, including the bottom leg of the bridle, must be bare.

(7) *Roller trawl or bobbin trawl.* In the Eureka, Columbia, and Vancouver subareas, if trawl mesh size less than 4.5 inches is used—

(A) Rollers or bobbins must be at least 14 inches in diameter and free to rotate, with at least two rollers or bobbins equally spaced on each side of the footrope within 10 feet of the center of the footrope of the net; and

(B) Continuous chain, rope, or cable (commonly known as a "tickler chain") which contacts the sea floor ahead of the rollers may not be used with a roller or bobbin trawl.

(c) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. latitude.

(d) *Traps or pots.* (1) Traps must be attended at least once every seven days.

(2) Traps must have biodegradable escape panels constructed with #21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches in diameter results when the twine deteriorates.

(3) Traps set individually must be marked at the surface with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(4) Traps laid on a groundline must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(e) *Spears.* Spears may be propelled by hand or by mechanical means.

(f) *Longlines.* (1) Longlines must be attended at least once every 7 days.

(2) Longlines must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(g) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 11640, Mar. 27, 1984; 49 FR 27520, July 5, 1984; 50 FR 26213, June 25, 1985]

§ 663.27 Catch restrictions.

Groundfish species harvested in the territorial sea (0-3 nautical miles) will be counted toward the catch limitations in this section.

(a) *Recreational fishing.* The limits for each person engaged in recreational fishing are three lingcod per day and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(b) *Commercial fishing*—(1) *Rockfish.* The trip limit for a vessel engaged in fishing with a pelagic trawl with mesh size less than 4.5 inches in the Conception or Monterey subareas is 500 pounds or 5 percent by weight of all fish on board, whichever is greater, of the species group composed of bocaccio, chilipepper, splitnose, and yellowtail rockfishes per fishing trip.

(2) *Pacific ocean perch.* The trip limit for Pacific ocean perch is 5,000 pounds or 10 percent by weight of all fish on board, whichever is greater, per vessel per fishing trip, except as modified under § 663.22(c).

(3) *Sablefish.* When it is determined that 90 percent of the OY will be reached for that portion of the Monterey subarea between 37°00′ N. latitude and 36°30′ N. latitude, or for the fishery management area as a whole, the Secretary will publish a notice in accordance with § 663.23 applicable to the relevant area dividing the 10 percent balance of OY equally (5 percent apiece) between trawl gear and fixed gear, and establishing a percentage trip limit for trawl gear. The trip limit will be based on the most recent data available for the season and will equal the average percentage of sablefish in all trawl landings containing sablefish in the area to which the trip limit applies (between 37°00′ N. latitude and 36°30′ N. latitude, or the fishery management area as a whole), but in no event will the trip limit exceed 30 percent by weight of all fish on board. If the Secretary determines that either trawl or fixed gear in the relevant area will take its 5 percent balance of OY, the Secretary will publish a notice of closure under § 663.23 prohibiting retention and landing of sablefish taken by that gear type in the relevant area. The provisions at § 663.21(b) prohibiting landings when OY is reached will apply even if fixed or trawl gear has not landed its 5 percent balance of OY.

[47 FR 43974, Oct. 5, 1982; 48 FR 13048, Mar. 29, 1983, as amended at 49 FR 27520, July 5, 1984]

§ 663.28 Restrictions on other fisheries.

(a) *Pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (multiplied by the number of days of the fishing trip) of groundfish species other than Pacific whiting, shortbelly rockfish, or arrowtooth flounder.

(b) *Spot and ridgeback prawns.* The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 1,000 pounds of groundfish species per fishing trip.

§ 663.29 Scientific research.

Nothing is this part is intended to inhibit or prevent any scientific research which is conducted in the fishery management area by a scientific research vessel. The Secretary will acknowledge notification of scientific research involving groundfish and conducted by a scientific research vessel by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Secretary will transmit copies of such letters to the Pacific Fishery Management Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

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669.25 Specifically authorized activities.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 50 FR 34851, Aug. 28, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 669.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

(b) This part regulates fishing for shallow-water reef fish within the Atlantic Ocean and Caribbean Sea portions of the fishery conservation zone (FCZ) adjacent to the State waters of Puerto Rico and the U.S. Virgin Islands.

§ 669.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meaning:

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Fish in the shallow-water reef fish fishery means any of the following species:

Squirrelfishes—Holocentridae

Squirrelfish, *Holocentrus ascensionis*
Longspine squirrelfish, *Holocentrus rufus*

Groupers—Serranidae

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*

Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Nassau grouper, *Epinephelus striatus*
Yellowfin grouper, *Mycteroperca venenosa*

Jacks—Carangidae

Yellow Jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*

Snappers—Lutjanidae

Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Mangrove snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Yellowtail snapper, *Ocyurus chrysurus*

Grunts—Haemulidae

Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

Porgies—Sparidae

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

Goatfishes—Mullidae

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

Butterflyfishes—Chaetodontidae

Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

Angelfishes—Pomacanthidae

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

Wrasses—Labridae

Spanish hogfish, *Bodianus rufus*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Hogfish, *Lachnolaimus maximus*

Parrotfishes—Scaridae

Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Stoplight parrotfish, *Sparisoma viride*

Surgeonfishes—Acanthruidae

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

Leatherjackets—Balistidae

Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys ringens*

Boxfishes—Ostraciidae

Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

Fish trap or trap means any trap and the component parts (including the lines and buoys) thereof used for taking finfish, regardless of the construction material.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of the Commonwealth of Puerto Rico and the U.S. Virgin Islands to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual onboard and in charge of that vessel.

Owner with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, or a designee, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone 813-893-3141.

Secretary means the Secretary of Commerce, or a designee.

State means the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

Total length means the greatest possible length of a fish with the mouth of the fish closed and the caudal fin (tail) squeezed together to give the greatest over-all measurement (Figure 1).

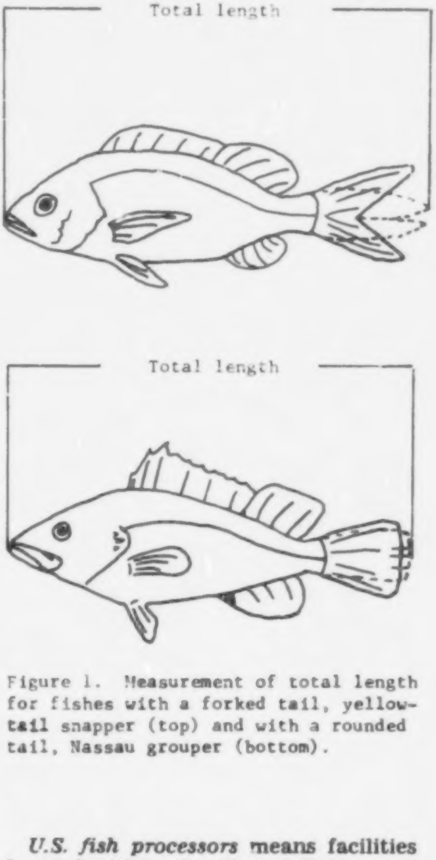

Figure 1. Measurement of total length for fishes with a forked tail, yellowtail snapper (top) and with a rounded tail, Nassau grouper (bottom).

U.S. fish processors means facilities located within the United States and vessels of the United States, used for or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 669.3 Relationship to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection, issuance of permits, and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

§ 669.4 Permits.

No permits are required for fishing vessels engaged in the shallow-water reef fish fishery within the FCZ (see vessel and gear identification requirements in § 669.6).

§ 669.5 Reporting and recordkeeping requirements. [Reserved]

§ 669.6 Vessel and gear identification.

(a) *Applicability.* A vessel in the commercial shallow-water reef fish fishery fishing with traps in the FCZ must obtain an identification number and color code issued by the Regional Director unless the vessel possesses a valid identification number and color code issued by the Government of Puerto Rico or the Government of the U.S. Virgin Islands.

(b) *Application to the Regional Director.* (1) An application for an identification number and color code must be submitted to the Regional Director 45 days prior to the date on which the applicant desires receipt.

(2) Each application must contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The name and length of the vessel;

(iii) The vessel's official number: and

(iv) The vessel's radio call sign.

(c) *Vessel identification.* Each fishing vessel must display the identification number and color code issued to the vessel by the Regional Director or State on the port and starboard sides of the deckhouse or hull. In addition, each vessel over 25 feet long must display its identification number and color code on an appropriate weather deck. All identification numbers and color codes must be displayed permanently and conspicuously so as to be readily identifiable from the air and water. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long, as least 10 inches high for vessels over 25 feet long, and at least 3 inches high for vessels 25 feet long or less. The color code representation must be in the form of a circle not less than 18 inches in diameter or a strip not less than 18 inches high and 18 inches long for vessels over 65 feet long; a circle not less than 10 inches in diameter or a strip not less than 10 inches high and 18 inches long for vessels over 25 feet long; and a circle not less than 3 inches in diameter or a strip not less than 3 inches high and 10 inches long for vessels 25 feet long or less.

(d) *Duties of operator.* The operator of each fishing vessel subject to this part must:

(1) Keep the identification number and color code clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or anything else aboard obstructs the view of the identification number and color code from an enforcement vessel or aircraft.

(e) *Gear identification.* (1) All traps and buoys used in the shallow-water reef fish fishery must be marked and identified as follows:

(i) Buoys affixed to traps must bear the number and color code specified for the vessel. The identification number must be legible and at least 3 inches high on each buoy.

(ii) Traps must bear the number specified for the vessel. The number must be legible and at least 3 inches high, or as high as the widest available space if such space is less than 3 inches wide. As an alternative, the number may be stamped on a plate of non-corrosive metal or plastic and securely affixed to the trap.

(2) Traps and buoys for shallow-water reef fish fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to shallow-water reef fish traps which are lost or sold if the owner of such traps reports in writing the loss or sale within 15 days to the Regional Director. The report must specify the number of traps lost or sold, the color code and the identification number.

(3) Unmarked shallow-water reef fish traps deployed in the FCZ at any time are illegal gear and may be disposed of in any appropriate manner by the Secretary or an authorized officer. Lines and buoys are considered part of the trap. If owners of the unmarked traps can be ascertained, those owners remain subject to appropriate civil penalties.

(Approved by the Office of Management and Budget under control number 0648-0097)

§ 669.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish with traps for shallow-water reef fish in the FCZ without an identification number and color code as required by § 669.6;

(2) Falsify or fail to affix and maintain gear and vessel markings as required by § 669.6;

(3) Possess in, or harvest from the FCZ Nassau grouper during the closed fishing season specified in § 669.21;

(4) Tend, open, pull, or otherwise molest or have in one's possession aboard a fishing vessel another person's fish traps except as provided in § 669.22;

(5) Possess in, or harvest from the FCZ yellowtail snapper less than the minimum size limit specified in § 669.23(a);

(6) Possess in, or harvest from the FCZ Nassau grouper less than the minimum size limit specified in § 669.23(b);

(7) Possess in the FCZ or land any shallow-water reef fish harvested in the FCZ without head and fins intact as specified in § 669.23(d);

(8) Possess or use fish traps in the FCZ with a mesh size smaller than the size limit specified under §669.24(a)(1);

(9) Possess, or use fish traps in the FCZ without a degradable panel or degradable door fastening as specified in § 669.24(a) (2) and (3);

(10) Fish for shallow-water reef fish in the FCZ with explosives, including powerheads, as specified in § 669.24(b)(1);

(11) Fish for shallow-water reef fish in the FCZ with drugs, poisons or other chemicals as specified in § 669.24(b)(2);

(12) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any shallow-water reef fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(13) Fail to comply immediately with enforcement and boarding procedures specified in § 669.8;

(14) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(15) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection under the Magnuson Act;

(16) Interfere with, delay, obstruct or prevent by any means a lawful investigation or search in the process of enforcing this part;

(17) Interfere with, obstruct, delay, or in any other manner prevent the seizure of illegally taken shallow-water reef fish or the final disposition of such shallow-water reef fish through the sale of the shallow-water reef fish;

(18) Resist a lawful arrest for any act prohibited by this part;

(19) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part; and

(20) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested shallow-water reef fish to any foreign fishing vessel, while such

foreign vessel is in the FCZ unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of the U.S.-harvested fish of the species concerned.

(b) It is unlawful to violate any other provisions of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

§ 669.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF-FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.-.-) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-.,-.- -,-.,-.- -) means "you should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of

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[1] Period (.) means a short flash of light, and Dash (-) means a long flash of light.

fishing gear which may be in the water.

(3) "SQ3" (...,- -.-,...- -) means "you should stop or heave to: I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

§ 669.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and to 50 CFR Part 621, and 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 669.20 Fishing year.

The fishing year for the shallow-water reef fish fishery begins on January 1 and ends on December 31.

§ 669.21 Closed seasons.

The fishing season for Nassau grouper in the FCZ is closed from 0001 hours January 1 through 2400 hours March 31. Nassau grouper taken during this period must be returned to the sea immediately with a minimum amount of harm.

§ 669.22 Harvest limitations.

Fish traps may be tended or pulled only by persons (other than authorized officers) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has onboard written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying the identification number and color code. Owner's letter of consent must specify effective time period, and trap owner's vessel identification number and color code.

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in the FCZ is 8 inches total length. Effective September 22, 1986, the minimum size of yellowtail snapper will be increased to 9 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 12 inches total length on September 22, 1989.

(b) The minimum size limit for the harvest or possession of Nassau grouper in the FCZ is 12 inches total length. Effective September 22, 1986, the minimum size of Nassau grouper will be increased to 13 inches. On each September 22 the minimum size will be increased one inch until reaching a minimum size of 24 inches total length on September 22, 1997.

(c) Undersized yellowtail snapper and Nassau grouper must be returned to the water immediately and with minimum harm.

(d) All shallow-water reef fish harvested in the FCZ and subject to minimum size limits specified in this section must be landed with the head, fins, and tail intact.

§ 669.24 Gear limitations.

(a)(1) Effective September 22, 1986, fish traps must have a minimum mesh size of 1¼ inches in the smallest dimension of the mesh opening.

(2) Fish traps must have on the sides or top, a degradable panel or degradable door fastening made of any material listed in paragraph (a)(3) of this section. The panel and door opening must not be smaller than either of the entry ports or funnel opening of the trap.

(3) Degradable material must be untreated fiber of biological origin, not more than three millimeters (approximately ⅛") maximum diameter, including but not limited to tyre palm, hemp, jute, cotton, wool, or silk, or non-galvanized black iron wire not more than 1.59 millimeters (approximately one-sixteenth inch) in diameter; that is, 16 gauge wire.

(b)(1) Explosives, including powerheads, may not be used to fish for shallow-water reef fish in the FCZ.

(2) Poisons, drugs, and other chemicals may not be used to fish for shallow-water reef fish in the FCZ.

EFFECTIVE DATE NOTE: Part 669 was added at 50 FR 34851, Aug. 28, 1985. Paragraph (a)(1) of § 669.24 becomes effective September 22, 1986.

§ 669.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

PART 671—TANNER CRAB OFF ALASKA

Subpart A—General

Sec.
671.1 Purpose and scope.
671.2 Definitions.
671.3 Relation to other laws.
671.4 Reporting requirements.
671.5 General prohibitions.
671.6 Enforcement.
671.7 Penalties.

Subpart B—Management Measures

671.21 Optimum yield.
671.22 Size and sex restrictions.
671.23 Vessel registration.
671.24 Vessel inspection.
671.25 Landing requirements.
671.26 Seasons, general gear restrictions, and registration areas.
671.27 Time and area closures.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 45 FR 72669, Nov. 3, 1980, unless otherwise noted.

Subpart A—General

§ 671.1 Purpose and scope.

This part regulates fishing for Tanner crab by vessels of the United States within that portion of the Bering Sea and Gulf of Alaska over which the United States exercises exclusive fishery management authority. These regulations implement the Tanner crab fishery management plan developed by the North Pacific Fishery Management Council.

[45 FR 72669, Nov. 3, 1980, as amended at 49 FR 44757, Nov. 9, 1984]

§ 671.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amended.

ADF&G means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, or an individual to whom appropriate authority has been delegated.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement agent or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Council means the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone 907-274-4563.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for (a) fishing or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

FMP means the Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska.

Landing means off-loading fish (including Tanner crab).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charter, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska, 99802 or an individual to whom appropriate authority has been delegated.

Registration Area A (Southeastern Alaska-Yakutat) is that portion of the FCZ in the Gulf of Alaska east of 143° 53'36" W. longitude (Cape Suckling).

Registration Area E (Prince William Sound) is that portion of the FCZ between 143°53'36" W. longitude (Cape Suckling) and 148°53' W. longitude (Cape Fairfield).

Registration Area H (Cook Inlet) is that portion of the FCZ lying west of 143°53' W. longitude (Cape Fairfield) and north of 58°52' N. latitude (Cape Douglas).

Registration Area J (Westward) includes the FCZ in the Bering Sea, and that part of the FCZ in the Gulf of Alaska between 148°53' W. longitude (Cape Fairfield) and 172° E. longitude south of 58°52' N. latitude (Cape Douglas).

Ring net means a bag-shaped net suspended from a circular or retangular frame.

Tanner crab means all species of the genus *Chionoecetes* including *C. bairdi* and *C. opilio.*

Tanner crab pot means a live-capture pot with either (1) side-loading, rigid tunnel eye openings that are individually a maximum of 5 inches (13 cm) in one dimension, and tunnel eye opening perimeters that individually are larger than 30 inches (76 cm), or (2) a single, top-loading, horizontal opening of any size.

Vessel of the United States means:

(a) A vessel documented or numbered by the Coast Guard under United States law; or

(b) A vessel, under five net tons, which is registered under the laws of any State.

[45 FR 72669, Nov. 3, 1980, as amended at 46 FR 57303, Nov. 23, 1981; 48 FR 40729, Sept. 9, 1983; 49 FR 35780, Sept. 12, 1984]

§ 671.3 Relation to other laws.

(a) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to make in-season adjustments pursuant to § 671.27 of this part.

(b) *Other agreements.* Certain responsibilities relating to the administration of this part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the United States Coast Guard.

§ 671.4 Reporting requirements.

(a) The operator of any fishing vessel subject to this part whose port of landing is in the United States is responsible for the submission of an accurately completed State of Alaska fish ticket for each sale or delivery of any Tanner crab covered by this part.

(b) At the election of the vessel operator, the fish ticket shall be either: (1) Submitted by the vessel operator directly to the ADF&G within one week after such Tanner crab are sold or delivered; or (2) prepared, at the request of the operator, by the purchaser (i.e., any person who receives Tanner crab for a commercial purpose from a fishing vessel subject to this part) and submitted by the purchaser to the ADF&G within one week after such Tanner crab are received by the purchaser.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (b)(2)) shall also accurately state on each such fish ticket: (1) Total time fished; (2) total number of pot lifts; and (3) quantity and type of gear used.

(d) The operator of any fishing vessel subject to this part whose port of landing is outside the State of Alaska shall submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket and in § 671.4(c), to the ADF&G within one week after the date of each sale or delivery of any Tanner crab. [Sample alternative document reserved.]

(e) Any U.S. processor who receives Tanner crab by way of purchase, barter, trade, or sale from a U.S. fishing vessel or prior purchaser subject to this part shall provide, when requested to do so by the Regional Director, but in no event more than twice a year, the following information by Tanner crab species:

(1) Actual plant capacity to process Tanner crab in the next fishing year, in terms of weight, and

(2) The estimated actual amount by weight of Tanner crab to be processed in the coming fishing year.

(Paragraphs (a) through (d) approved by the Office of Management and Budget under control number 0648-0016 and paragraph (e) under control number 0648-0114)

[45 FR 72669, Nov. 3, 1980, as amended at 48 FR 34762, Aug. 1, 1983]

§ 671.5 General prohibitions.

It is unlawful for any person to:

(a) Fish for, take, or retain Tanner crab in violation of the Act, this part, or any regulation or permit issued under the Act, including but not limited to the following: during closed seasons or in closed areas specified in Subpart B; after closure of an area when a catch limitation is reached, or as otherwise announced by a field order issued under this part; or by means of gear or methods prohibited by this part, *except that C. bairdi* Tanner crab taken incidentally to permitted fishing for *C. opilio* Tanner crab in the area north of 58° N. latitude and west of 164° W. longitude may be retained;

(b) Take and retain Tanner crab in violation of § 671.22 of this part;

(c) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any Tanner crab taken in violation of the Act, this part, or any other regulation or permit issued under the Act;

(d) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(e) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (d) of this section;

(f) Resist a lawful arrest for any act prohibited by this part; or

(g) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

§ 671.6 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-)[1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 671.7 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

EDITORIAL NOTE: At 50 FR 39696, Sept. 30, 1985, § 671.7 was incorrectly identified as § 671.9.

Subpart B—Management Measures

§ 671.21 Optimum yield.

(a) *Table.* The optimum yield for Tanner crab for each Federal registration area is set forth in Table I. These specifications of optimum yield are effective for the fishing year beginning on November 1, and ending on October 31.

TABLE 1—OPTIMUM YIELDS (MILLIONS OF POUNDS) OF TANNER CRAB STOCKS IN THE FISHING DISTRICTS OR REGISTRATION AREAS OFF ALASKA [1]

Registration area—District	Optimum yield
Southeastern (A):	
Southeast	1.0 to 3.0.
Yakutat	0.1 to 1.0
Prince William Sound (E)	1.5 to 3.5
Cook Inlet (H)	1.5 to 3.0
Westward (J):	
Kodiak	11.0 to 33.0.
Chignik	0.5 to 5.0.
South Peninsula	2.0 to 6.0.
Eastern Aleutians	0.1 to 2.0.
Western Aleutians	0.1 to 2.0
Bering Sea:	
C. bairdi	5.0 to 28.5.
C. opilio	20.0 to 130.5.[2]

[1] Catches of Tanner crab in a State of Alaska registration area or district will be considered part of the optimum yield specified for the contiguous Federal registration area or district of the same name.

[2] Equals domestic annual harvest.

(b) *Limitation.* Except that *C. bairdi* Tanner crab taken incidentally to permitted fishing for *C. opilio* Tanner crab in the area north of 58° N. latitude and west of 164° W. longitude may also be retained.

(c) *Field orders.* Except as provided in § 671.21(b), if the Regional Director determines that the optimum yield for a particular species of Tanner crab in any geographic area specified in Table I will be reached, the Secretary shall issue a field order pursuant to § 671.27(a) prohibiting fishing for that particular species of Tanner crab by vessels of the United States in the applicable geographic area from the effective date of the field order.

[45 FR 72669, Nov. 3, 1980, as amended at 46 FR 57305, Nov. 23, 1981; 49 FR 35780, Sept. 12, 1984]

§ 671.22 Size and sex restrictions.

(a) *Female Tanner crabs.* No female Tanner crab may be retained.

(b) *Male Tanner crab.* No male Tanner crab of the species *C. bairdi* measuring less than 5.5 inches (140 mm) across the greatest width of the carapace may be retained, except that male Tanner crab of the species *C. bairdi* in Federal registration area E (Prince William Sound) may be retained if they measure 5.3 inches (135 mm) or greater across the greatest width of the carapace. No male Tanner crab of the species *C. opilio* measuring less than 3.1 inches (78 mm) across the greatest width of the carapace may be retained. The width measurement of Tanner crab is determined by measuring the greatest straight line distance across the carapace, including the spines, perpendicular to an imaginary line drawn between a point midway between the eyes and the midpoint of the posterior portion of the carapace.

(c) *General.* All female and undersized male Tanner crabs of the species *C. bairdi* must be returned to the sea immediately with a minimum of injury, regardless of their condition.

[45 FR 72669, Nov. 3, 1980, as amended at 48 FR 40729, Sept. 9, 1983]

§ 671.23 Vessel registration.

(a) *Requirement.* Any vessel of the United States fishing for Tanner crab in any Federal registration area must be registered for fishing in such area pursuant to this section.

(b) *Applications:* (1) The owner (or the owner's authorized agent) of a fishing vessel desiring to fish for Tanner crab in a Federal registration area, not registered for a State of Alaska registration area contiguous with such Federal registration area, must submit to the Regional Director, within 30 days prior to the scheduled opening of fishing in the Federal registration area, a completed State of Alaska registration form to be used as a Federal form.

(2) A fishing vessel registered for a State of Alaska registration area will be deemed to be registered for the contiguous Federal registration area.

(c) *Registration certificate.* The registration certificate shall be signed by the owner (or the owner's authorized agent), shall be kept onboard by the operator at all times during fishing operations, and shall be shown by the operator upon request to any Authorized Officer.

(d) *Registration validation.* A registration certificate is not valid until the fishing vessel has complied with the inspection requirements contained in § 671.24 of this part. A valid registration certificate becomes invalid:

(1) Upon landing Tanner crab in a Federal registration area other than the area for which the vessel is registered (or other than the contiguous State of Alaska registration area), or

(2) Seventy-two (72) hours after the close of the season for the applicable Federal registration area, whichever occurs first.

(e) *Late registration.* The late registration of any fishing vessel may be permitted by the Regional Director in the case of the loss of a registered fishing vessel. For purposes of this paragraph, "loss of a registered fishing vessel" means that the fishing vessel is incapable of being used to take Tanner crab during the open Tanner crab season in the area for which it is registered. An application for late registration under this paragraph shall be documented by submission of adequate proof, in writing, concerning the loss of the vessel. The late registration shall be for the Federal registration area in which the lost fishing vessel was registered.

(f) *Expiration.* A registration certificate expires on the last day of the registration year. Registration for any subsequent year shall be obtained by re-application in accordance with the procedure set forth in this ection.

(g) *Registration year.* The registration year shall be August 1 through July 31.

(h) *Exclusive registration areas.* (1) Federal registration areas E and H are exclusive registration areas. No fishing vessel registered for an exclusive Federal registration area may be registered for any other Federal registration area (exclusive or non-exclusive) during a registration year.

(2) A fishing vessel registered for an exclusive State of Alaska registration area may register only in the contiguous Federal exclusive registration area during that registration year.

(3) No operator of a fishing vessel registered for an exclusive Federal registration area may operate any other fishing vessel registered for any other exclusive Federal registration area.

(i) *Non-exclusive registration areas.* Federal registration areas A and J are non-exclusive registration areas. A fishing vessel may be registered for any or all of the non-exclusive Federal registration areas during any registration year.

§ 671.24 Vessel inspection.

(a) *Inspection.* (1) Within 24 hours prior to fishing for Tanner crab for the first time during an open season, each registered fishing vessel must have its holds and live tanks, if any, inspected by an Authorized Officer at an inspection point specified in paragraph (b) of this section.

(2) *Requirement.* A registration certificate will not be validated if there are Tanner crab on board the fishing vessel at the time of inspection.

(3) *Certificate.* No fishing vessel will be issued an inspection certificate unless a current registration certificate for the contiguous Federal registration area is displayed to the Authorized Officer conducting the inspection. The inspection certificate shall be signed by the current fishing vessel operator, shall be kept on board by the operator at all times during fishing operations, and shall be shown by the operator upon request to any Authorized Officer.

(b) *Inspection points.* Inspection points are those established by the ADF and G for State of Alaska purposes and by these regulations for Federal purposes. Additional inspection points may be authorized by the Regional Director if the Regional Director finds that:

(1) Existing inspection points are imposing an unusual and material hardship which affected fishermen cannot themselves mitigate; or

(2) The ADF and G has no practical means of making special administra-

tive accommodations regarding existing inspection points; and

(3) Authorization of additional inspection points would not result in a significant likelihood of unauthorized fishing or other management or enforcement problems.

[45 FR 72669, Nov. 3, 1980, as amended at 46 FR 57303, Nov. 23, 1981]

§ 671.25 Landing requirements.

(a) Except as provided in paragraph (b) of this section, all Tanner crab must be landed in the State of Alaska registration area contiguous to a Federal registration area for which the fishing vessel is registered.

(b) The operator of a fishing vessel who desires to land Tanner crab outside the State of Alaska, or in a State registration area other than the State registration area contiguous to a Federal registration area for which the fishing vessel is registered, shall contact, by radio or other means, an Authorized Officer prior to leaving the Federal registration area for which the fishing vessel is registered, and shall state to the Authorized Officer the amount of Tanner crab on board at the time. A fishing vessel operator acting pursuant to this paragraph shall submit the vessel to inspection at such location as the Authorized Officer may require. The operator shall not land an amount of Tanner crab which is more than one hundred and ten (110) percent or less than ninety (90) percent of the amount stated to be present onboard upon leaving the Federal registration area, or observed to be present onboard at the time of any inspection.

(c) *Certificate validity.* If a fishing vessel lands Tanner crab pursuant to paragraph (b) of this section, the registration certificate of the fishing vessel becomes invalid. To again become validly registered for a Federal registration area, the fishing vessel must be reinspected pursuant to the procedures of § 671.24 of this part.

§ 671.26 Seasons, general gear restrictions, and registration areas.

(a) *Season dates*—(1) *Criteria for setting season opening and closing dates.* The Council may recommend to the Regional Director Tanner crab season opening and closing dates that it finds to be necessary in accordance with the following factors:

(i) Deadloss—the need to prevent or minimize deadloss, i.e., mortality of crab prior to processing.

(ii) Recovery rate—the need to increase the meat recovery rate.

(iii) Weather—the need to schedule seasons to avoid severe weather conditions.

(iv) Costs—the need to mininize costs to the industry.

(v) Other fisheries—the need to consider demands by other fisheries on harvesting, processing, and transportation systems.

(vi) Coordinated season timing—the need to distribute fishing effort and thus prevent gear saturation in a particualr area.

(vii) Enforcement and management costs—the need to consider costs of enforcement and management before, during, and after an open season.

(2) *Procedures*—(i) As soon as practicable after the Council has recommended to the Regional Director season opening and closing dates, the Secretary will publish an initial notice in the FEDERAL REGISTER specifying the proposed dates. Public comments on the proposed dates and whether they are consistent with the objectives of the FMP will be invited for a period of 30 days after this notice is published in the FEDERAL REGISTER.

(ii) Within 45 days after the end of the comment period, the Secretary will publish a second notice approving, disapproving, or partially disapproving the proposed season dates based on comments received and his determination on whether the dates are consistent with the objectives of the FMP, the national standards of the Magnuson Act, and other applicable law. Season opening and closing dates presented under this paragraph will remain in effect until the Secretary issues a notice approving changes to those dates.

(b) *General gear restrictions.* (1) At least one buoy on each Tanner crab pot or ring net shall be legibly marked with the permanent ADF and G vessel license number of the fishing vessel using the gear or, if a fishing vessel does not have a permanent ADF and

G vessel license number, with the official documentation number of the fishing vessel operating the gear. Identification numbers shall be painted on the top one-third of the buoy in numerals at least 4 inches in height and ½ inch in width in contrasting color to that of the buoy. The buoy markings shall be legible and visible on the buoy above the water surface when attached to the Tanner crab pot, and maintained in a legible condition.

(2) All Tanner crab pots shall contain an opening in the webbing of a side wall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(3) During any period when fishing for all species of Tanner crab is prohibited in any Federal registration area, Tanner crab pots shall either be removed from the water or stored in less than 25 fathoms (46m) of water, with all doors secured fully open and all bait and bait containers removed, with the following exceptions:

(i) In the Kamishak Bay and Southern districts of the Cook Inlet area, the maximum pot storage depth is 15 fathoms (27m);

(ii) Tanner crab pots with all doors secured fully open and with all bait and bait containers removed may be stored in water depth greater than the maximum permissible storage depth for 72 hours after the season closure where the pots are fished.

(iii) Tanner crab pots may be stored in waters deeper than 25 fathoms (46m) if specifically allowed by this section.

(c) *Registration Area A*—(1) Districts. The following districts within Registration Area A are established:

(i) *Southeast District:* All waters between Dixon Entrance and a line projected southwest (225° true north) from the westernmost tip of Cape Fairweather.

(ii) *Yakutat District:* All waters between a line projected southwest from the westernmost tip of Cape Fairweather and the longitude of Cape Suckling (143°53′ W. longitude).

(2) *Seasons.* (i) Tanner crab may be taken in the Southeast District from December 1 through May 1, subject to adjustment by the Secretary of Commerce under § 671.27 of this part.

(ii) Tanner crab may be taken in the Yakutat District from February 1 through May 15, subject to adjustment by the Secretary of Commerce under § 671.27 of this part.

(3) *Gear.* Tanner crab may be taken in the Yakutat District with top loading pots only.

(d) *Registration Area E*—(1) *Districts.* The following districts within Federal Registration Area E are established:

(i) *Western District:* All waters east of the longitude of Cape Fairfield (148°53′ W. longitude) south of a line from the southern entrance of Port Nellie Juan at 60°36′ N. latitude to Point Eleanor (60°34′42″ N. latitude, 147°34′6″ W. longitude) to the eastern tip of Smith Island (60°31′54″ N. latitude, 147°19′ W. longitude) to Montague Point (60°22′18″ N. latitude, 147°06′0″ W. longitude), west of a line from Zaikof Point (60°18′12″ N. latitude, 146°55′42″ W. longitude) to Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude) and west of the longitude of Seal Rocks.

(ii) *Eastern District:* All waters east of the longitude of Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude), east of a line from Seal Rocks, to Cape Hinchinbrook (60°15′54″ N. latitude, 146°37′18″ W. longitude), south of a line from Point Bentinck (60°23′24″ N. latitude, 146°05′36″ W. longitude) to Point Whitshed (60°26′36″ N. latitude, 145°53′12″ W. longitude), and west of the longitude of Cape Suckling (51°59′ N. latitude, 143°53′36″ W. longitude).

(iii) *Hinchinbrook District:* All waters east of a line from Montague Point to the eastern tip of Smith Island, south of a line from the eastern tip of Smith Island to Johnstone Point (60°28′48″ N. latitude, 146°37′18″ W. longitude), north and east of a line from Cape Hinchinbrook to Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude), and east of a line from Seal Rocks to Zaikof Point.

(2) *Seasons.* Tanner crab may be taken in Registration Area E from November 15 through May 31 only, subject to adjustment by the Secretary pursuant to § 671.27 of this part.

(3) *Gear.* (i) Only Tanner crab pots may be used to fish for Tanner crab. Tanner crab taken by any other means must be returned immediately to the sea, with a minimum of injury, regardless of their condition.

(ii) Two escape rings, 4¾ inches (121 mm) in minimum inside diameter, so located on the vertical plane to permit the escape of undersized crabs, shall be provided for each Tanner crab pot.

(e) *Registration Area H*—(1) *Districts.* The following districts within Registration area H are established:

(i) *Central District:* All waters between a line extending from Boulder Point at 60°46′23″ N. latitude, to Shell Platform C (60°45′50″ N. latitude, 151°30′08″ W. longitude), then to a point on the west shore at 60°46′23″ N. latitude, and the latitude of Anchor Point Light (59°40′12″ N. latitude, 151°52′ W. longitude).

(ii) *Southern District:* All waters within a line from Anchor Point Light west to 59°46′15″ N. latitude, 152°20′ W. longitude, then south to 59°04′15 N. latitude, 152°20′ W. longitude, then in a northeasterly direction to Cape Elizabeth (59°9′12″ N. latitude; 151°53′18″ W. longitude), then from Cape Elizabeth to Point Adam, (59°15′12″ N. latitude; 151°58′48″ W. longitude, including Kamishak Bay.

(iii) *Kamishak Bay District:* All waters within a line from 59°46′15″ N. latitude, 153°00′30″ W. longitude, then east to 59°46′15″ N. latitude, 152°20′ W. longitude, then south to 59°04′15″ N. latitude, 152°20′ W. longitude, then southwesterly to Cape Douglas (58°50′54″ N. latitude, 153°16′24″ W. longitude), including Kamishak Bay.

(iv) *Barren Islands District:* All waters within a line from Cape Douglas to Cape Elizabeth, then south to 58°52′ N. latitude, 151°53′ W. longitude, then west to Cape Douglas.

(v) *Outer District:* All waters within a line from Point Adam to Cape Elizabeth, then south to 58°52′ N. latitude, 151°53′ W. longitude, then east to the longitude of Aligo Point (149°44′33″ W. longitude), then north to the mainland of Alaska.

(vi) *Eastern District:* All waters east of the longitude of Aligo Point (149°44′33″ W. longitude), west of the longitude of Cape Fairfield (148°53′ W. longitude), and north of 58°52′ N. latitude.

(2) *Seasons.* (i) Tanner crab may be taken in the Southern district from December 1 through April 30 only, subject to adjustment by the Secretary pursuant to § 671.27 of this part.

(ii) Tanner crab may be taken in the Central, Kamishak Bay, Barren Islands, and Outer and Eastern Districts from December 1 through May 31 only, subject to adjustment by the Secretary pursuant to § 671.27 of this part.

(f) *Registration Area J*—(1) *Districts.* The following districts within registration area J are established:

(i) *Kodiak District.* All waters south of 58°51′N. latitude, west of 150°W. longitude and east of the longitude of Cape Kumlik (157°35′W. longitude). The following sections (figure 1) within the Kodiak district are established:

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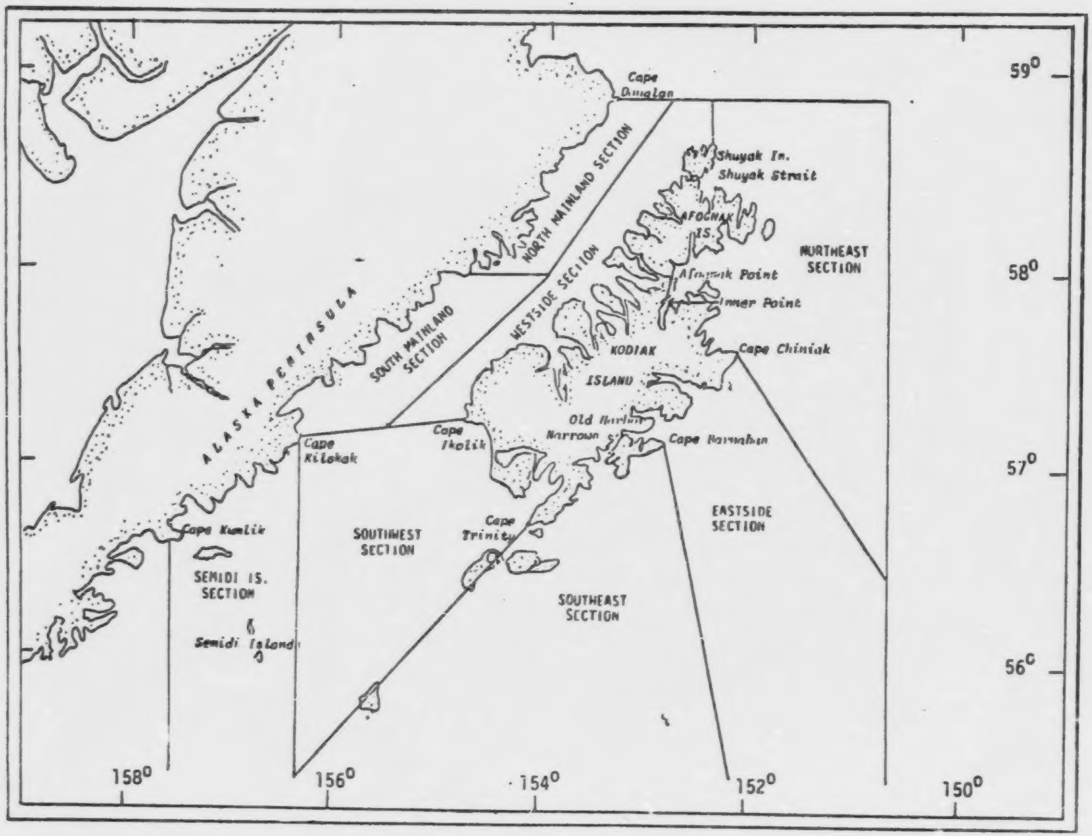
Cape Douglas
NORTH MAINLAND SECTION
Shuyak In.
Shuyak Strait
AFOGNAK IS.
NORTHEAST SECTION
ALASKA PENINSULA
SOUTH MAINLAND SECTION
WESTSIDE SECTION
Afognak Point
Inner Point
Cape Chiniak
KODIAK ISLAND
Old Harbor
Narrow Cape
Cape Barnabas
Cape Ikolik
Cape Kilokak
Cape Kumlik
SOUTHWEST SECTION
Cape Trinity
EASTSIDE SECTION
SEMIDI IS. SECTION
SOUTHEAST SECTION
Semidi Islands
59°
58°
57°
56°
158°
156°
154°
152°
150°

Figure 1.--Designated Tanner crab fishing sections within the Kodiak district.

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(A) *Northeast Section.* All waters northeast of a line extending 145°T from the easternmost tip of Cap Chiniak (57°37′N. latitude, 152°10′W. longitude), east of a line from the northernmost tip on Inner Point (57°59′N. latitude, 152°47′W. longitude) to Afognak Point (57°59′N. latitude, 152°47′W. longitude), east of 152°30′W. longitude in Shuyak Strait and east of the longitude of the northernmost tip of Shuyak Island (152°20′W. longitude), and south of 58°51′N. latitude;

(B) *Eastside Section.* All waters southwest of a line extending 145°T from the easternmost tip of Cape Chiniak, northeast of a line extending 168°T from the easternmost tip of Cape Barnabas (53°09′N. latitude, 152°53′W. longitude) and Old Harbor Narrows east of 153°16′W. longitude;

(C) *Southeast Section.* All waters southwest of a line extending 168°T from the easternmost tip of Cape Barnabas (53°09′N. latitude, 152°53′W. longitude) and east of a line extending 222°T from the southernmost tip of Cape Trinity (56°44′50″N. latitude, 154°08′30″W. longitude);

(D) *Southwest Section.* All waters west of a line extending 222°T from the southernmost tip of Cape Trinity (56°44′50″W. latitude, 154°08′30″ W. longitude), south of a line from the westernmost tip of Cape Ikolik (57°17′15″N. latitude, 154°47′W. longitude) to the southernmost tip of Cape Kilokak (57°11′15″N. latitude, 156°19′W. longitude) and east of the longitude of Cape Kilokak;

(E) *Semidi Island Section.* All waters west of the longitude of Cape Kilokak (156°19′W. longitude) and east of the longitude of Cape Kumlik (157°35′W. longitude);

(F) *Westside Section.* All waters north of a line from the westernmost tip of Cape Ikolik (57°17′15″N. latitude, 154°47′W. longitude), east of a line from 57°15′N. latitude, 155°30′W. longitude to 58°N. latitude, 154°W. longitude to 58°51′N. latitude, 152°45′W. longitude, west of a line from the northernmost tip of Inner Point to the southernmost tip of Afognak Point (57°59′30″N. latitude, 152°47′30″W. longitude), west of 152°30′W. longitude in Shuvak Strait and west of the longitude of the northernmost tip of Shuyak Island (152°20′W. longitude), and south of 58°51′N. latitude;

(G) *North Mainland Section.* All waters north of 58°N. latitude, west of a line from 58°51′N. latitude, 152°45′W. longitude to 58°N. latitude, 154°W. longitude and south of 58°51′N. latitude; and

(H) *South Mainland Section.* All waters south of 58°N. latitude, west of line from 58°N. latitude, 154° W. Longitude to 57°15′ N. Latitude, 155°30′ W. longitude and north of a line from the southernmost tip of Cape Kilokak (57°11′15″ N. latitude, 156°19′W. longitude) to 57°15′ N. latitude, 155°30′W. longitude.

(ii) *South Peninsula District.* All waters east of the longitude of Scotch Cap Light (164°44′06″W. longitude) to west of a line connecting the following points:

(A) Kupreanof Point (55°34′N. latitude, 159°36′W. longitude).

(B) The easternmost point of Castle Rock (55°16′48″N. latitude, 159°29′W. longitude).

(C) The intersection of a line extending southeast (135°T from point (2) to 157°35′W. longitude).

(iii) *Chignik District.* All waters west of the longitude of Cape Kumlik (157°35′ W. longitude) to east of a line connecting the following points:

(A) Kupreanof Point (55°34′N. latitude, 159°36′W. longitude).

(B) The easternmost point of Castle Rock (55°16′48″N. latitude, 159°29′W. longitude).

(C) The intersection of a line extending southeast (135°T from point (2) to 157°35′W. longitude).

(iv) *Eastern Aleutian District:* All waters of Registration Area J between the longitude of Scotch Cap light (164°44′6″ W. longitude) and 172° W. longitude and south of 54°36′ N. latitude.

(v) *Western Aleutian District:* All waters of Registration Area J west of 172° W. longitude and south of 54°36′ N. latitude.

(vi) *Bering Sea District:* Bering Sea waters north of 54°36′ N. latitude. The following subdistricts within the Bering Sea District are established:

(A) *Southeastern Subdistrict:* East of 168° W. longitude, and south of the latitude of Cape Newenham (58°39′ N. latitude), and all Bristol Bay waters.

(B) *Pribilof Subdistrict:* West of 168° W. longitude and south of the latitude of Cape Newenham (58°39′ N. latitude).

(C) *Northern Subdistrict:* North of the latitude of Cape Newenham (58°39′ N. latitude). The following sections within the Northern Subdistrict are established:

(*1*) *Nome section:* All waters of Norton Sound between the longitude of Penny River and the longitude of Tophok Head.

(*2*) *General section:* All other waters of the northern subdistrict.

(2) *Seasons.* Subject to adjustment by the Secretary in accordance with § 671.27, Tanner crab may be taken in Registration Area J:

(i) In all sections of the Kodiak District from 12:00 noon February 10, through 12:00 noon April 30 only, except that in the Semidi Island section Tanner crab may be taken from 12:00 noon February 10 through 12:00 noon May 15 only.

(ii) In the South Peninsula District from 12:00 noon February 10 through 12:00 noon May 15 only.

(iii) In the Chignik District from 12:00 noon February 10 through 12:00 noon May 15 only.

(iv) In the Eastern Aleutian District from 12:00 noon February 15 through 12:00 noon June 15 only.

(v) In the Western Aleutian District from 12:00 noon November 10 through 12:00 noon June 15 only.

(vi) In the Bering Sea District from 12:00 noon February 15 through 12:00 noon June 15 only, except that Tanner crab other than *C. bairdi* may be taken or possessed from 12:00 noon February 15 until 12:00 noon August 1.

(3) *Storage of gear.* During any period when fishing for all species of Tanner crab is prohibited in the applicable area, Tanner crab pots may be stored in the water only if stored:

(i) In the waters which are both west of 172°W. longitude and 30 fathoms (55 meters) or less in depth; or

(ii) In the Southeastern Subdistrict, in the waters which are bounded on the north by 58°N. latitude, on the south by 57°N. latitude, on the east by 164°W. longitude and on the west by 166°W. longitude.

[45 FR 72669, Nov 3, 1980, as amended at 46 FR 57303-57305, Nov. 23, 1981; 46 FR 58700, Dec. 3, 1981; 47 FR 10044, Mar. 9, 1982; 48 FR 40729, Sept. 9, 1983; 49 FR 35780, Sept. 12, 1984]

§ 671.27 Time and area closures.

(a) *Field orders.* (1) Field orders issued by the Secretary under this part shall include the following information:

(i) A description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this section shall be effective until:

(i) It is filed for publication with the Federal Register;

(ii) It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the ADF and G for posting and publicizing of similar notices of closure for 48 hours prior to its effective dates; and

(iii) It has been broadcast, at those time intervals, channels and frequencies customarily used by the ADF and G to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(i) Any expiration date stated in the field order; or (ii) the effective date of any field order which modifies, rescinds, or supersedes the initial field order.

(b) *In-season adjustments*—(1) *General.* The Secretary may, following consultation with the ADF and G, adjust the opening and closing dates for the Federal registration areas, districts, subdistricts, and sections specified in § 671.26 of this part.

(2) *Determinations.* Any adjustment under this section shall be based on a determination by the Regional Director that (i) the condition of Tanner crab stocks in any such geographic area is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such

differences reasonably support the need for in-season conservation measures to protect such Tanner crab stocks.

(3) *Data.* Fishery data reported in-season which relate to one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within the area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of Tanner crab within the area in comparison with pre-season prediction;

(iv) The proportion of immature or softshell Tanner crab being handled;

(v) General information on the condition of Tanner crab within the area; and

(vi) Any other factors relevant to the conservation and management of Tanner crab.

(4) *Procedures.* (i) The Secretary shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Secretary finds for good cause that such advance notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that any in-season adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of 15 days after the effective date of the adjustment.

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802).

(iv) If comments are received during the 15-day period, the Secretary shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of adjustments.* The Regional Director shall give notice of in-season adjustments by issuance of field orders in accordance with the procedures in paragraph (a) of this section.

(c) *Optimum yield.* No action which has the effect of raising the optimum yield for Tanner crab in any geographic area as specified in Table 1 of § 671.21(a) is authorized under this section.

(d) *Prohibition.* Any fishing for Tanner crab contrary to a field order issued under this section is prohibited.

[45 FR 72669, Nov. 3, 1980, as amended at 47 FR 57305, Nov. 23, 1981]

PART 672—GROUNDFISH OF THE GULF OF ALASKA

Subpart A—General

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AUTHORITY: 16 U.S.C. 1801 *et seq.*.

SOURCE: 45 FR 73487, Nov. 5, 1981, unless otherwise noted.

Subpart A—General

§ 672.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of the Gulf of Alaska over which the United States exercises exclusive fishery management authority.

(b) For regulations governing fishing in the Gulf of Alaska groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.92.

(c) These regulations implement the Gulf of Alaska groundfish fishery management plan developed by the North Pacific Fishery Management Council.

§ 672.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 through 1882, as amended.

ADF and G means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, or an individual to whom appropriate authority has been delegated.

Authorized officer means: (1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bottom trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Groundfish means pollock, cod, any species of flounder and sole, Pacific ocean perch, thornyhead rockfish, other rockfish, sable fish, Atka mackerel, squid, and other finfish, except salmon, steelhead trout, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogramma.*

Cod means *Gadus macrocephalus.*

Arrowtooth flounder means *Atheresthes stomias.*

Other flounder means Pleuronectiformes (order) not specifically defined.

Rock sole means *Lepidopsetta bilineata.*

Flathead sole means *Hippoglossoides elassodon.*

Pacific ocean perch means *Sebastes alutus.*

Atka mackerel means *Pleurogrammus monopterygius.*

Sablefish means *Anoplopoma fimbria.*

Squid means sepioid and teuthoid squid.

Salmon means of the family Salmonidae.

Pacific halibut means *Hippoglossus styenolepis.*

Steelhead trout means *Salmo gairdneri.*

Rattail means Coryphaenoides not specifically defined.

Thornyhead rockfish, not specifically defined, means rockfish of the genus *Sebastolobus.*

Other rockfish means all fish of the genus *Sebastes* except Pacific ocean perch and *S. polyspinus, S. aleutianus, S. borealis,* and *S. zacentrus.*

Gulf of Alaska means that portion of the fishery conservation zone in the North Pacific Ocean exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude seaward of the State of Alaska.

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

Off-bottom trawl means a trawl in which the otter boards may be in contact with the seabed but the ground rope of the net remains above the seabed.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in subparagraph (1), (2), or (3).

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or an individual to whom appropriate authority has been delegated.

Regulatory area means any of three areas of the FCZ of the Gulf of Alaska seaward of the State of Alaska. The three regulatory areas are described as follows:

Area and Location

Eastern, between 132°40′ and 147°00′ W. longitude.

Central, between 147°00′ and 159°00′ W. longitude.

Western, between 159°00′ and 170°00′ W. longitude.

Regulatory district means any of four districts of the Eastern Regulatory area as follows:

(1) Southeast Inside district—all waters of the territorial sea (shoreward of three miles) east of 137°00′ W. longitude and north of 54°30′ W. longitude;

(2) Southeast Outside district—all waters of the FCZ east of 137°00′ W. longitude;

(3) East Yakutat district—all waters between 137°00′ W. longitude and 140°00′ W. longitude; and

(4) West Yakutat district—all waters between 140°00′ W. longitude and 147°00′ W. longitude.

Secretary means the Secretary of Commerce or a designee.

Vessel of the United States means:

(1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under 5 net tons, which is registered under the laws of any State.

[45 FR 73487, Nov. 5, 1981, as amended at 48 FR 43049, Sept. 21, 1983; 49 FR 48050, Dec. 10, 1984]

§ 672.3 Relation to other laws.

(a) *Federal law.* For other regulations concerning the conservation of halibut see the regulations of the International Pacific Halibut Commission, or any regulations implementing any halibut fishery management plan approved under the Act. For other regulations concerning fishing for Tanner crab and salmon see 50 CFR Part 671 and 50 CFR 674 respectively.

(b) *State law.* Certain data collection and enforcement activities under this part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the U.S. Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to take actions pursuant to § 672.22 of this part, and to apportion reserves pursuant to § 672.20(c) of this part.

§ 672.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this part. Permits shall be issued without charge.

(b) *Application.* An applicant may obtain a permit by submitting to the Regional Director a written request containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used; and

(6) The signature of the applicant.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section shall given written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified pursuant to Subpart D of 15 CFR Part 904.

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried abroad the vessel whenever the vessel is fishing for groundfish. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(Approved by the Office of Management and Budget under control number 0648-0097)

[45 FR 73487, Nov. 5, 1981, as amended at 48 FR 34762, Aug. 1, 1983; 49 FR 1044, Jan. 6, 1984]

§ 672.5 Reporting requirements.

(a) *Fishing vessel reporting requirements*—(1) *Port of landing in Alaska.* The operator of any fishing vessel regulated under this part whose port of landing is in the State of Alaska shall, for each sale or delivery on land of groundfish caught in any Gulf of Alaska regulatory area, be responsible for the submission to ADF and G of an accurately completed State of Alaska fish ticket.

(i) At the election of the vessel operator, the fish ticket required under this paragraph (a)(1) shall be either:

(A) Submitted by the vessel operator directly to the ADF and G within one week after such fish are sold or delivered; or (B) prepared, at the request of the operator, by the purchaser and submitted by the purchaser to ADF and G within one week after such fish are received by the purchaser. For the purposes of this paragraph (a), a "purchaser" is any person who receives on land, from a fishing vessel regulated under this part, groundfish caught in any Gulf of Alaska regulatory area.

(ii) In addition to the requirements of paragraph (a)(1) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (a)(1)(i)(B) of this section) shall accurately state on each fish ticket:

(A) The quantity and types of gear used;

(B) The total time fished with each gear type; and

(C) The total number of hauls for each gear.

(2) *Port of landing outside Alaska.* (i) The operator of any fishing vessel regulated under this part who intends

to deliver groundfish at a port of landing outside the State of Alaska, shall notify any officer of the Alaska Department of Fish and Game or the Director, Alaska Region, National Marine Fisheries Service at 907-586-7221, of his expected or actual date of departure from Alaska waters.

(ii) The operator of any fishing vessel regulated under this part whose port of landing is outside the State of Alaska shall, for each sale or delivery of groundfish caught in any Gulf of Alaska regulatory area, submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, together with the additional information required by paragraph (a)(1)(ii) of this section, to the ADF and G within one week after the date of each such sale or delivery. Send these documents to Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3-2000, Juneau, Alaska 99802.

(b) *Processor and purchaser reporting requirements*—(1) Any U.S. fish processor or purchaser (i.e., any person who receives fish for a commercial purpose from a fishing vessel subject to this part), except:

(i) Any fisherman purchasing fish for his own use as bait or (ii) any foreign fishing vessel permitted to receive U.S. harvested fish at sea, shall accurately complete each written survey authorized by this section and received by the processor or purchaser from the Regional Director.

(2) Surveys shall be conducted at those times considered necessary by the Regional Director, but at least twice, and no more than four times, during the fishing year.

(3) Each survey shall be designed to gather the following information:

(i) Changes in processing plant capacity;

(ii) Changes in the availability of groundfish by species;

(iii) Changes in market demand;

(iv) Changes in expected utilization of processing capacity or expected purchases of groundfish species for the subsequent 12-month period; and

(v) Changes in other factors which the purchaser or processor believes relevant to the accurate determination of the amounts of domestic annual processing (DAP) and domestic nonprocessed fish (DNP).

(4) Completed surveys shall be returned to the Regional Director at the address and by the date specified on the survey.

(c) *U.S. vessels delivering to foreign processing vessels.* (1) The owner or operator of any fishing vessel regulated by this section who has delivered, or intends to deliver, groundfish caught in any Gulf of Alaska regulatory area to a foreign fishing vessel at sea shall accurately complete each written survey authorized by this section and received by the owner or operator from the Regional Director.

(2) Surveys shall be conducted at those times considered necessary by the Regional Director, but at least twice, and no more than four times during the fishing year.

(3) Each survey shall be designed to gather the following information:

(i) Changes in the number and capacity of U.S. vessels which harvest groundfish to be delivered to foreign fishing vessels at sea;

(ii) Changes in regulatory areas of operation;/-11(iii) Changes in capacity or operations of the foreign fishing vessel to which deliveries are being, or will be, made;

(iv) Changes in quantities and species of groundfish expected to be delivered in the subsequent 12-month period;

(v) Changes in alternative fishery opportunities available to the U.S. vessels; and

(vi) Changes in other factors the owner or operator believes relevant to the accurate determination of the amount of joint venture processing (JVP).

(4) Completed surveys shall be returned to the Regional Director at the address and by the date specified on the survey.

(The information collection requirements in paragraph (a)(2)(ii) were approved by the Office of Management and Budget under control number 0648-0016, and paragraphs (b)(4) and (c)(4) under control number 0648-0114)

[45 FR 73487, Nov. 5, 1981, as amended at 48 FR 34762, Aug. 1, 1983; 48 FR 43050, Sept. 21, 1983]

§ 672.6 [Reserved]

§ 672.7 General prohibitions.

It shall be unlawful for any person to:

(a) Fish for groundfish with a vessel of the United States which does not have aboard a valid permit issued pursuant to this part;

(b) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any fish taken or retained in violation of the Act, this part, or any other regulation or permit issued under the Act;

(c) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation or permit issued under the Act;

(d) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (c) of this section;

(e) Resist a lawful arrest for any act prohibited by this part;

(f) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(g) Forcibly assault, resist, impede, intimidate, or interfere with an observer placed aboard a fishing vessel pursuant to this part;

(h) Violate any other provision of this part, the Act, or any regulation or permit issued under the Act.

§ 672.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 672.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 672.20 Optimum yield.

(a) *Optimum yield (OY), domestic annual harvest (DAH), total allowable level of foreign fishing (TALFF), and reserves.*

(1) The initial annual specifications of (OY), reserves, DAH, domestic annual processing (DAP), JVP, and the TALFF for species regulated under this part are set forth in Table 1. The OY specifications remain in effect from year to year. The other specifications change from year to year in accordance with the procedure presented in paragraph (a)(2) of this section.

(2) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, shall publish a rule-related notice in the Federal Register proposing the initial apportionments for the following year of the OYs specified in Table 1 among DAP, JVP, reserves, and TALFF. The preliminary specifications of DAP and JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. industry. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be invited by the Secretary for a period of 30 days after they are published in the Federal Register. In light of comments received, the Secretary shall publish a second rule-related notice in the Federal Register by January 1 of each year prescribing the initial apportionments of OY among JVP, DAP, reserves, and TALFF for that year. These amounts will replace the corresponding amounts for the previous year in Table 1, a revised version of which will be published as part of the notice.

(3) When the combined catch by foreign and U.S. vessels reaches the OY amount for a species or species category, further fishing for all species will be prohibited in the applicable regulatory area or district for the remainder

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

of the calendar year, except that fishing for sablefish by fishing vessels of the United States using longline gear will not be prohibited unless the OY for sablefish in the fishing area or district has been reached.

TABLE 1—INITIAL (AS OF JAN. 1, EACH YEAR) OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), METRIC TONS. OY=DAH+RESERVE + TALFF; DAH = DAP + JVP

Species	Species code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
Gulf of Alaska Groundfish Fishery:								
Pollock	701	Western-Central [1]	400,000	219,300	9,000	210,300	80,000	100,700
		Eastern [1]	16,600	300	300	0	3,320	12,980
		Total	416,600	219,600	9,300	210,300	83,320	113,680
Pacific cod	702	Western	16,560	750	500	250	3,312	12,498
		Central	33,540	26,300	11,700	14,600	3,708	3,532
		Eastern	9,900	120	120	0	1,980	7,800
		Total	60,000	27,170	12,320	14,850	9,000	23,830
Flounders	129	Western	10,400	10	0	10	2,080	8,310
		Central	14,700	8,720	100	8,620	2,940	3,040
		Eastern	8,400	300	300	0	1,680	6,420
		Total	33,500	9,030	400	8,630	6,700	17,770
Pacific ocean perch [2]	780	Western	2,700	1,770	0	1,770	540	390
		Central	7,900	2,620	620	2,000	1,580	3,700
		Eastern	875	460	460	0	175	240
		Total	11,475	4,850	1,080	3,770	2,295	4,330
Other rockfish [3]	849	Total	7,600	895	395	500	1,520	5,185
Sablefish [4]	703	Western	1,670	300	100	200	334	1,036
		Central	3,060	1,650	1,360	290	612	798
		West Yakutat [1]	1,680	1,344	1,344	0	296	40
		East Yakutat [1]	850-1,135	850-1,135	850-1,135	0	N/A	N/A
		Southeast Outside [1]	470-1,435	470-1,435	470-1,435	0	N/A	N/A
		Total	7,730-8,980	4,614-5,864	4,124-5,374	490	1,282	1,834
Atka mackerel	207	Western	4,678	800	400	400	936	2,942
		Central	20,836	1,500	0	1,500	4,167	15,169
		Eastern	3,186	0	0	0	637	2,549
		Total	28,700	2,300	400	1,900	5,740	20,560
Squid	509	Total	5,000	110	100	10	1,000	3,890
Thornyhead rockfish	749	Total	3,750	200	150	50	750	2,800
Other Species [5]	499	Total	28,780	500	100	400	5,756	22,524

[1] See § 672.2 and figure 1 of § 611.92 for description of regulatory areas and districts.

[2] The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish).

[3] The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 2 above and *Sebastolobus* (thornyhead rockfish).

[4] Excludes values for the Southeast Inside District, which in not governed by these regulations.

[5] The category "other species" includes sculpins, sharks, skates, smelts, capelin, and octopus. The OY is equal to 5% of the upper range of the total OYs of the target species.

(b) *Field orders.* (1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table I of paragraph (a) will be reached, the Secretary shall issue a field order pursuant to § 672.22(a) prohibiting fishing for all species in that fishing area, except that the Secretary shall not prohibit, under this section, fishing for sablefish by fishing vessels using longline gear unless the Regional Director determines that the OY for sablefish in that fishing area will be reached.

(2) Fishing for species of groundfish by vessels of the United States in the applicable regulatory area contrary to any field order issued under this paragraph is prohibited from the effective date of such field order except that fishing for sablefish with longline gear is not prohibited until the effective date of a field order prohibiting longline fishing for sablefish in that fishing area.

(c) *Apportionment of reserves and initial DAH*—(1) *Apportionment of reserves.* (i) In accordance with paragraph (c)(4) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, shall reapportion to TALFF, part or all of the reserves specified in Table 1.

(ii) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Secretary may apportion to DAH, in accordance with paragraph (c)(3) of this section, any amounts of any reserve that he determines to be needed to supplement DAH: April, June, and August.

(2) *Apportionment of surplus DAH to TALFF.* In accordance with paragraph (c)(4) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council shall apportion to TALFF, any part of the DAH amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

(3) *Allocation of increases or decreases in DAH among DAP and JVP.* The Secretary shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (c)(1)(i) and (c)(2) of this section among the DAP and JVP components of DAH.

(4) *Standards and procedure for apportionment*—(i) *General.* The Secretary shall apportion to TALFF under paragraphs (c)(1) and (c)(2) of this section only those amounts which he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, in the discretion of the Secretary, either be apportioned to the estimate of domestic annual harvest (DAH), or retained in the reserve as eligible for later apportionment under pargraph (c) of this section.

(ii) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (c)(1) and (c)(2) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director shall consider the following factors, although he shall not be limited to these factors:

(A) Reported United States catch and effort by species and area compared to previously projected United States harvesting capacity;

(B) Projected United States catch and effort by species and area for the remainder of the fishing year;

(C) Amounts of fish, particularly United States harvested fish, already purchased or processed by United States fish processors during the fishing year, compared to previously projected processing capacity of United States fish processors;

(D) Projected processing capacity, and utilization of that capacity for the processing of United States harvested fish, by United States fish processors for the remainder of the fishing year;

(E) Amounts of United States harvested fish already received or processed by foreign fishing vessels, compared to previously projected levels of such receipt or processing; and

(F) The need to maintain orderly fisheries despite any misspecifications of by-catch species amounts in mixed species fisheries.

(iii) *Allocation of increases and decreases in DAH between DAP and JVP.* The Secretary shall allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (c)(1) and (c)(2) of this section between DAP and JVP.

(iv) *Public comment.* (A) Comments may be submitted to the Regional Director concerning:

(*1*) Whether, and the extent to which, vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*2*) Whether, and the extent to which, United States harvested groundfish can or will be processed by United States fish processors or received at sea by foreign fishing vessels.

(*3*) Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (c)(1) or (c)(2) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (c)(1) of this section, he shall publish a rule-related notice in the FEDERAL REGISTER on the proposed apportionment which will state the period during which comments may be submitted. If the Secretary finds it necessary to apportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of fifteen (15) days after the effective date of the apportionment. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and will publish responses to those comments in the FEDERAL REGISTER as soon as it is practicable.

(B) The Secretary shall consider any timely comments submitted in accordance with this paragraph in determining whether, and to what extent, vessels of the United States will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (c)(1) and (c)(2) of this section.

(C) The Regional Director shall compile, in aggregate form, the most recent available reports on (*1*) level of catch and effort by vessels of the United States fishing for groundfish in the Gulf of Alaska; and (*2*) amounts of United States harvested groundfish taken in the Gulf of Alaska and processed by United States fish processors or delivered at sea to foreign fishing vessels. These data shall be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 25 days of each comment period.

(v) *Procedure.* As soon as practicable after each of the dates specified in, and each additional date selected under paragraph (c)(1) or (c)(2) of this section, the Secretary shall publish in the FEDERAL REGISTER:

(A) Any reserve amounts to be apportioned to TALFF or DAH;

(B) Any DAH amounts to be apportioned to TALFF;

(C) The distribution of amounts apportioned to or from DAH among DAP and JVP;

(D) The reasons for any apportionments and their distribution; and

(E) Responses to any comments received.

(d) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish, the retention of which is prohibited by other applicable law, including regulations implementing any fishery management plan for that species.

(i) Any catch of halibut by fishing vessels regulated by this part is catch of a prohibited species, unless retention is authorized by the regulations of the International Pacific Halibut Commission.

(ii) Any catch of Tanner crab (*C. bairdi* or *C. opilio*) by fishing vessels regulated by this part is catch of a prohibited species as a result of regulations implementing the Fishery

Management Plan for Tanner crab of Alaska (see 50 CFR Part 671).

(iii) Any catch of salmon by fishing vessels regulated by this part is catch of a prohibited species as a result of regulations implementing the Fishery Management Plan for High Seas Salmon off the Coast of Alaska, east of 175° 00′ East longitude (see 50 CFR Part 674).

(2) Each vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(3) There shall be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulated by this part was caught and retained in violation of this part.

(4) In any regulatory area where the OY in Table I of paragraph (a) for any species is "0" (zero), any catch of that species by a vessel regulated by this part in that fishing area shall be considered catch of a "prohibited species" and shall be treated in accordance with this paragraph.

(e) *Halibut.* (1) If, during the period between December 1 and May 31, the Secretary determines that the estimated total catch of halibut in any regulatory area by vessels regulated by this part will reach the amount listed below, he shall issue a field order pursuant to § 672.22(a) prohibiting, until June 1, groundfish fishing with trawl gear in that regulatory area by vessels regulated by this part. Regulatory Area and Catch Amount.

Western—29 metric tons (m.t.)
Central—52 m.t.
Eastern—31 m.t.

(2) Fishing for groundfish with trawl gear by vessels regulated by this part in the applicable regulatory area is prohibited from the effective date of any field order issued pursuant to this paragraph, until June 1.

[45 FR 73487, Nov. 5, 1980, as amended at 48 FR 43050, Sept. 21, 1983; 49 FR 1063, Jan. 9, 1984; 49 FR 28854, July 17, 1984]

EFFECTIVE DATE NOTE: At 50 FR 28581, July 15, 1985, an emergency interim rule was issued amending § 672.20 by revising paragraph (b), effective from July 10, 1985 until October 8, 1985. At 50 FR 29687, July 22, 1985, § 672.20 was further amended by an emergency interim rule by revising Table 1 in paragraph (a) and adding paragraph (a)(4), effective from July 17, 1985 until October 15, 1985. Table 1 was correctly revised at 50 FR 32071, Aug. 8, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 672.20 Optimum yield.

(a) * * *

TABLE 1—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), INITIAL RESERVE AND ADJUSTMENTS TO RESERVE BY THIS ACTION, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP

Species/species code/area[1]	OY	DAH	DAP	JVP	Reserve	TALFF
Pollock 701:						
Western/Central	305,000	256,871	44,371	199,629 + 12,871 now 212,500	61,000 - 37,871 now 23,129	0 + 25,000 now 25,000
Eastern	16,600	13,280	13,280	0	3,320	0
Total	321,600	270,151	57,651	212,500	now 26,449	25,000
Pacific cod 702:						
Western	16,560	5,748	2,539	3,209	3,312 - 100 now 3,212	7,500 + 100 now 7,600
Central	33,540	24,332	19,901	4,431	6,708 - 100 now 6,608	2,500 + 100 now 2,600
Eastern	9,900	7,920	7,920	0	1,980	0
Total	60,000	38,000	30,360	7,640	11,800	10,200
Flounders 129:						
Western	10,400	8,320	7,398	922	2,080 - 200	0 + 200

TABLE 1—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), INITIAL RESERVE AND ADJUSTMENTS TO RESERVE BY THIS ACTION, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP—Continued

Species/species code/area[1]	OY	DAH	DAP	JVP	Reserve	TALFF
					now 1,880	now 200
Central	14,700	11,760	8,292	3,468	2,940 −250 now 2,690	0 +250 now 250
Eastern	8,400	6,720	6,720	0	1,680	0
Total	33,500	26,800	22,410	4,390	now 6,250	now 450
Pacific ocean perch[2] 780:						
Western	1,302	1,302	1,302	0	0	0
Central	3,906	3,906	3,906	0	0	0
Eastern	875	875	875	0	0	0
Total	6,083	6,083	6,083	0	0	0
Sablefish[3] 703:						
Western	1,670	1,670	1,670	0	0	0
Central	3,060	3,060	3,060	0	0	0
West Yakutat	1,680	1,680	1,680	0	0	0
East Yakutat	850-1,135	850-1,135	850-1,135	0	0	0
Southeast Outside	470-1,435	470-1,435	470-1,435	0	0	0
Total	7,330-8,960	7,330-8,980	7,330-8,980	0	0	0
Atka Mackerel 297:						
Western	4,678	3,742	50	3,692	936 −100 now 836	0 −100 now 100
Central	500	380	350	30	100	20
Eastern	100	80	80	0	20	0
Total	5,278	4,202	480	3,722	now 956	now 120
Other rockfish[4] 849:						
Gulf-wide	5,000	4,000 +733 now 4,733	4,000 +600 now 4,600	0 +133 now 133	0 −733 now 267	0 0 0
Thornyhead rockfish 749:						
Gulf-wide	3,750	3,000	2,990	10	750 −50 now 700	0 +50 now 50
Squid 509:						
Gulf-wide	5,000	4,000	3,990	10	1,000 −50 now 950	0 +50 now 50
Other species[5] 499:						
Gulf-wide	22,460	17,944	16,544	1,400	4,516 −325 now 4,191	0 +325 325

[1] See figure 1 of § 672.20 for description of regulatory areas and districts.

[2] The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish).

[3] Excludes values for the Southeast Inside District, which is not governed by these regulations.

[4] The category "Other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 2 above and *Sebastolobus* (thornyhead rockfish).

[5] The category "Other species" includes sculpins, sharks, skates, eulachon smelts, capelin, and octopus. The OY for "Other species" is equal to 5% of the target species.

* * * * *

(4) If a joint venture prohibited species catch limit for sablefish or Pacific ocean perch for the Western or Central Regulatory Area, as set forth in § 672.21, is taken by U.S. vessels while fishing in joint ventures for delivery to foreign vessels, that entire regulatory area will be closed to further delivery by U.S. vessels of groundfish to foreign vessels.

* * * * *

(b) Notices of closure.

(1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table 1 of paragraph (a) of this section has been or will be

reached, the Secretary will issue a notice under § 672.22(a) closing fishing for that species in that area or district, and declaring that species in that area or district to be a prohibited species as defined in paragraph (d) of this section. During the time that such a closure is in effect, the operator of every vessel regulated by this part will minimize the catch of that species in the applicable area or district.

(2) If, in making a determination under paragraph (b)(1) of this section, the Regional Director also determines that continued fishing for other groundfish species in the area or district concerned may lead to overfishing of the species for which the OY has been or will be reached, the Secretary will, in the notice required by that paragraph, also prohibit or limit such fishing for other groundfish species in a manner that will prevent overfishing of the species for which the OY is taken.

* * * * *

§ 672.21 Catch limitations.

Prohibited species catch (PSC) limits. PSC limits in the regulatory areas of the Gulf of Alaska are set forth in Table 2.

TABLE 2—PSC'S (MT) FOR SABLEFISH, PACIFIC OCEAN PERCH, AND OTHER ROCKFISH IN JOINT VENTURE (JVP) AND FOREIGN (TALFF) FISHERIES

Species	Regulatory area		Gulf-wide
	Western	Central	
Sablefish:			
JVP	245	545	
TALFF	140	31	
Pacific ocean perch:			
JVP	53	98	
TALFF	30	16	
Rockfish: TALFF			25

[50 FR 29688, July 22, 1985]

EFFECTIVE DATE NOTE: At 50 FR 29688, July 22, 1985, § 672.21 was added, effective July 17, 1985 until October 15, 1985.

§ 672.22 Time and area closures.

(a) *Field orders.* (1) Field orders issued by the Secretary under this part shall include the following information: (i) A description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this paragraph shall be effective until:

(i) It is filed for publication in the FEDERAL REGISTER;

(ii) It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for the posting and publicizing of similar notices of closure, for 48 hours prior to its effective date; and

(iii) It has been broadcast at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(i) Any expiration date stated in the field order; or

(ii) The effective date of any field order which modifies, rescinds, or supersedes the initial field order.

(b) *Inseason adjustments* (1) *General.* The Secretary may, following consultation with the ADF&G, prohibit fishing by vessels regulated by this part, for any species of groundfish in any portion of the Gulf of Alaska during the fishing year.

(2) *Determinations.* Any adjustment under this paragraph shall be based on a determination by the Regional Director that:

(i) The condition of any groundfish or halibut stock in any portion of the Gulf of Alaska is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for inseason conservation measures to protect groundfish or halibut stocks.

(3) *Data.* Fishery and observer data reported inseason which relates to one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within a regulatory area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) Amount of halibut being caught;

(v) Condition of stocks within the area; and

(vi) Any other factors relevant to the conservation and management of the groundfish or halibut resource.

(4) *Procedure.* (i) The Secretary shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(ii) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment shall be received by the Regional Director for a period of 15 days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.)

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802.)

(iv) If comments are received during the 15-day period, the Secretary shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) Publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of adjustments.* The Secretary shall give notice of inseason adjustments by issuance of a field order in accordance with the procedures in paragraph (a) of this section.

(6) *Optimum yield.* No action which has the effect of raising the optimum yield for any species as specified in Table I of § 672.20(a) is authorized under this paragraph.

(c) *Prohibition.* Any fishing contrary to a field order issued under this section is prohibited.

[45 FR 73487, Nov. 5, 1980, as amended at 47 FR 23940, June 2, 1982]

§ 672.23 [Reserved]

§ 672.24 Gear limitations.

Biodegradable escape panels required for all sablefish pots. Each sablefish pot used in fishing under these regulations shall have a biodegradable panel. This panel shall consist of an opening in the webbing of the pot which has been laced, sewn, or secured by untreated cotton twine or other natural fiber no larger than 120 thread which, upon deterioration, produces an opening in the web with a perimeter equal to the perimeter of the tunnel eye opening.

§§ 672.25—672.26 [Reserved]

§ 672.27 Observers.

All fishing vessels subject to this part must, when so requested by the Regional Director, take aboard an observer.

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

Subpart A—General

Sec.

674.1 Purpose and scope.
674.2 Definitions.
674.3 Relation to other laws.
674.4 Permits.
674.5 Reporting requirement.
674.6 [Reserved]
674.7 Prohibitions.
674.8 Enforcement.
674.9 Penalties.

Subpart B—Management Measures

674.20 General.
674.21 Time and area limitations.
674.22 Catch limitations.
674.23 Modifications of time and area limitations.
674.24 Gear restrictions.

AUTHORITY: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

SOURCE: 46 FR 33047, June 26, 1981 (interim rule), and 46 FR 57302, Nov. 23, 1981 (final rule), unless otherwise noted.

Subpart A—General

§ 674.1 Purpose and scope.

(a) The purpose of this part is to implement the fishery management plan

(FMP) for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude. The FMP was developed by the North Pacific Fishery Management Council and approved by the Assistant Administrator for Fisheries of NOAA under the Magnuson Fishery Conservation and Management Act, as amended; 16 USC 1801 through 1882 (the Act).

(b) This part governs fishing for salmon by fishing vessels of the United States in the fishery conservation zone (FCZ) seaward of Alaska east of 175° E. longitude. All provisions of this part shall remain in effect until modified, revoked, or superseded.

§ 674.2 Definitions.

Most of the terms used in this part are defined in the Act. Additional terms are defined below. (Some terms defined in the Act are repeated or clarified to aid understanding of this part).

ADF and *G* means the Alaska Department of Fish and Game.

Act means the Magnuson Fishery Conservation and Management Act, as amended; 16 USC 1801 through 1882.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or an individual to whom appropriate authority has been delegated.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commercial fishing means fishing for fish for sale or barter.

Fishery conservation zone (FCZ) means that area contiguous to the territorial sea of the United States which, except where modified to accommodate international boundaries, encompasses all waters lying between the seaward boundary of each of the coastal States (the "three-mile limit") and a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity other than scientific research which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Hand troll gear means one or more lines with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically-powered device or attachment.

Management area means the two areas described below:

(a) *West Area* means the waters of the FCZ seaward of Alaska between 175° E. longitude and 143°53′36″ W. longitude (Cape Suckling);

(b) *East Area* means the waters of the FCZ seaward of Alaska east of 143°53′36″ W. longitude.

NMFS means the National Marine Fisheries Service, NOAA.

NOAA means the National Oceanic and Atmospheric Administration, United States Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Optimum yield means that amount of any species of salmon which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, as specified in the FMP.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether for bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to a party to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Personal use fishing means fishing other than commercial fishing.

Power troll gear means one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

Regional Director means the Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7221, or an individual to whom the Regional Director has delegated appropriate authority.

Salmon means the following species:

Chinook (or king) salmon (*Oncorhynchus tshawytscha*);

Coho (or silver) salmon (*O. kisutch*);

Pink (or humpback) salmon (*O. gorbuscha*);

Sockeye (or red) salmon (*O. nerka*); and

Chum (or dog) salmon (*O. keta*).

Vessel of the United States means:

(a) A vessel documented or numbered by the Coast Guard under United States law; or

(b) A vessel, under five net tons, which is registered under the laws of any State.

§ 674.3 Relation to other laws.

(a) *Federal law.* For regulations concerning fishing for Tanner crab see 50 CFR Part 671; for regulations concerning fishing for groundfish in the Gulf of Alaska see 50 CFR Part 672; and for regulations concerning fishing for halibut see regulations of the International Pacific Halibut Commission (IPHC) at 50 CFR 301. This Part 674 does not apply to fishing conducted under the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1021 through 1035, which is the only directed fishing for salmon by vessels other than vessels of the United States which may be conducted in the FCZ seaward of Alaska. 50 CFR Part 661 concerns fishing for salmon seaward of California, Oregon, and Washington.

(b) *State law.* This part will be administered in close coordination with ADF and G's administration of the State of Alaska's regulations governing the salmon troll fishery off Southeast Alaska. Because no commercial fishing for salmon is permitted in the FCZ west of Cape Suckling, all commercial salmon fisheries west of Cape Suckling will take place within the territorial sea and be subject to the management authority of the State of Alaska. Certain responsibilities concerning the enforcement of this part will be carried out by employees of the State of Alaska under an agreement with NMFS and the United States Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to take actions under §§ 674.4 and 674.23 of this part.

§ 674.4 Permits.

(a) *General*—(1) *Commercial fishing using power troll gear.* Commercial fishing for salmon in the management area using power troll gear may be engaged in by any operator of a fishing vessel who:

(i) Held a valid State of Alaska power troll permanent entry permit on May 15, 1979, or is a transferee under paragraph (c) of this section of an operator who held such a permit on that date;

(ii) Held a valid State of Alaska power troll interim use permit on May 15, 1979; or

(iii) Holds a permit issued by the Regional Director under paragraph (b) of this section.

(2) [Reserved]

(3) *Personal use fishing.* Personal use fishing in the management area may be engaged in by any person who at the time of such fishing holds a valid State of Alaska sport fishing license.

(4) No person may engage in power trolling for salmon in the management area unless that person is described in paragraph (a)(1) of this section; except that no permit is required of a crew member or other person assisting in commercial salmon fishing operations if a person described in paragraph (a)(1) of this section is on board the same fishing vessel and engaged in commercial fishing. No person may engage in personal use fishing for salmon in the management area unless that person is described in paragraph (a)(3) of this section.

(5) The authority to engage in fishing for salmon in the management area that is granted by this paragraph (a) constitutes a use privilege which may be revoked or modified without compensation.

(b) *Permits issued by the Regional Director*—(1) *Eligibility.* (i) Except as provided in paragraph (b)(1)(ii) of this section, any person is eligible for a permit described in paragraph (a)(1)(iii) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the management area; (B) engaged in commercial fishing for salmon in the management area; (C) caught salmon in the management area using power troll gear; and (D) landed such salmon.

(ii) The following persons are not eligible: (A) Persons described in paragraph (a)(1)(i) or (a)(1)(ii) of this section; (B) persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit; and (C) persons already holding a permit under this paragraph (b).

(2) *Application.* (i) Each applicant for a permit under this paragraph shall submit a written application to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(ii) Each applicant shall provide the following information:

(A) The applicant's name, mailing address, and telephone number; (B) the name of the fishing vessel; (C) the fishing vessel's United States Coast Guard documentation number or State registration number; (D) the home port of the fishing vessel; (E) the length and registered tonnage of the fishing vessel; (F) the color of the fishing vessel; (G) the type of fishing gear used by the fishing vessel; and (H) the signature of the applicant.

(iii) The information required by paragraphs (b)(2)(ii)(A) through (G) shall be provided for each vessel which the applicant intends to use for commercial fishing under this part. Any changes in such information occurring after a permit is issued shall be reported to the Regional Director within 30 days of that change.

(iv) Each applicant shall submit State fish tickets or other equivalent documents showing the actual landing of salmon taken in the management area by the applicant with power troll gear during any one of the years 1975 to 1977.

(3) *Issuance.* (i) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application and any document required under paragraph (b)(2)(iv) of this section, the Regional Director will promptly determine whether permit eligibility conditions have been met, and if so, will issue a permit. If the permit is denied, the Regional Director will notify the applicant in accordance with paragraph (d) of this section.

(ii) If an incomplete or improperly completed permit application is filed, or if any document required under paragraph (b)(2)(iv) of this section has not been filed, the Regional Director shall promptly notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(4) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been altered, erased, or mutilated shall be invalid.

(5) *Replacement.* Replacement permits may be issued to replace lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(6) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(c) *Transfer of authority to fish for salmon in the management area*—(1) *Holders of State of Alaska power troll permanent entry permits.* (i) The authority of any person described in paragraph (a)(1)(i) of this section to engage in commercial fishing for salmon using power troll gear in the management area shall expire upon the transfer of that person's State of Alaska power troll permanent entry permit to another and shall be transferred to the new holder of that permit.

(ii) Any person to whom transfer of a State of Alaska power troll permanent entry permit is denied by the State of Alaska may apply, with the consent of the current holder of that permit, to the Regional Director for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the management area. The Regional Director shall approve the transfer if it is determined that the applicant had the ability to participate actively in the fishery at the time the application for transfer of the permit was filed with the State of Alaska; that the applicant has access to power troll gear necessary for participation in the fishery; that the State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained; and that the proposed transfer of the permit is not a lease. The application shall be filed with the Regional Director within thirty days of the denial by the State of Alaska of transfer of the permit. The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed transfer of the permit and a copy of the State of Alaska's decision denying the transfer of the permit. The Regional Director may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application. Upon approval of the application by the Regional Director, the authority of the permit holder to engage in commercial fishing for salmon in the management area using power troll gear shall expire, and that authority shall be transferred to the applicant.

(2) *Other permits.* Except as provided in paragraph (c)(3) of this section, the authority of any person described in paragraph (a)(1)(ii), (a)(1)(iii), or (a)(3) of this section to fish for salmon in the management area may not be transferred to any other person. Except for emergency transfers, the authority to engage in commercial fishing for salmon which was transferred under paragraph (c)(1)(ii) of this section may not be transferred to any other person except the current holder of the State of Alaska power troll permanent entry permit from which that authority was originally derived. That authority may be transferred to the current holder of that permit upon receipt of written notification of the transfer by the Regional Director, from which time the transferee under paragraph (c)(1)(ii) of this section shall no longer be authorized to engage in commercial fishing for salmon using power troll gear in the management area.

(3) *Emergency transfers—authority to use power troll gear.* The authority of any person described in paragraph (a)(1) of this section to engage in commercial fishing for salmon using power troll gear in the management area may be transferred to another for a period not lasting beyond the end of the calendar year of the transfer when sickness, injury, or other unavoidable hardship prevents the holder of that authority from engaging in such fishing. Such a transfer shall take effect automatically upon approval by the State of Alaska of an emergency transfer of a State of Alaska power troll entry permit, in accordance with the terms of the permit transfer. Any

person to whom emergency transfer of a State of Alaska power troll entry permit is denied by the State of Alaska and any person desiring to obtain emergency transfer of a Federal commercial power troll permit previously issued by the Regional Director may apply, with the consent of the current holder of that permit, to the Regional Director for transfer to the applicant of the current holder's authority to engage in commercial fishing for salmon using power troll gear in the management area for a period not lasting beyond the calendar year of the proposed transfer. The Regional Director shall approve the transfer if he determines that sickness, injury, or other unavoidable hardship prevents the current permit holder from engaging in such fishing; that the applicant had the ability to participate actively in the fishery at the time the application for emergency transfer of the permit was filed with the State of Alaska or, in the case of a Federal permit, with the Regional Director; that the applicant has access to power troll gear necessary for participation in the fishery; and that the State of Alaska has not instituted proceedings to revoke the permit on the ground that it was fraudulently obtained. The application in the case of a State of Alaska permit shall be filed with the Regional Director within thirty days of the denial by the State of Alaska of emergency transfer of the permit. The application shall include all documents and other evidence submitted to the State of Alaska in support of the proposed emergency transfer of the permit and a copy of the State of Alaska's decision denying the emergency transfer of the permit. The Regional Director may request additional information from the applicant or from the State of Alaska to assist in the consideration of the application. Upon approval of the application by the Regional Director, the authority of the permit holder to engage in commercial fishing for salmon using power troll gear in the management area shall expire for the period of the emergency transfer, and that authority shall be transferred to the applicant for that period.

(d) *Appeals and hearings.* (1) A decision by the Regional Director: (i) To deny a permit under paragraph (b)(3)(i) of this section; or (ii) to deny transfer of authority to engage in commercial fishing for salmon in the management area under paragraph (c) of this section, shall be in writing, shall state the facts and reasons therefor, and shall advise the applicant of the rights provided in this paragraph (d).

(2) Any such decision of the Regional Director shall be final thirty days after receipt by the applicant, unless an appeal is filed with the Assistant Administrator within that time. Failure to file a timely appeal shall constitute waiver of the appeal. (Address: Assistant Administrator, National Marine Fisheries Service, Room 400, Page 2 Building, 3300 Whitehaven Street, NW., Washington, DC 20235). Appeals under this paragraph shall be in writing, shall set forth the reasons why the appellant believes the Regional Director's decision was in error, and shall include any supporting facts or documentation. At the time the appeal is filed with the Assistant Administrator, the appellant may request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time shall constitute a waiver of the hearing. If a request for a hearing is filed, the Assistant Administrator may order a hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant. If the Assistant Administrator orders a hearing, that order shall also serve to appoint a hearing examiner to conduct an informal fact finding inquiry into the matter. Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations. As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this section, the Assistant Administrator shall notify the appellant in writing of the final decision. The notice shall summarize the findings of the Assistant Administrator and set forth the basis of the decision.

The decision of the Assistant Administrator shall be final and unappealable.

(e) *Display.* Any permit or license described in paragraph (a)(1), or (a)(3) of this section shall be on board the vessel at all times while the vessel is in the management area, and shall be displayed for inspection upon request by an authorized officer.

(f) For purposes of this section, the term "person" excludes any nonhuman entity.

(Approved by the Office of Management and Budget under control number 0648-0097)

[47 FR 57302, Nov. 23, 1981, as amended at 48 FR 34763, Aug. 1, 1983; 49 FR 1044, Jan. 6, 1984]

§ 674.5 Reporting requirements.

The operator of any fishing vessel subject to this part whose port of landing is in the United States but outside Alaska, or who sells, transfers, or delivers salmon in the FCZ, must submit a completed Alaska fish ticket, or a completed fish ticket of the State where the salmon are landed which contains all of the information required on an Alaska fish ticket, within one week after the date of each landing, sale, transfer, or delivery to the Director, Division of Commercial Fisheries, Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK 99802.

(Approved by the Office of Management and Budget under control number 0648-0016)

[49 FR 29612, July 23, 1984]

§ 674.6 [Reserved]

§ 674.7 Prohibitions.

It is unlawful for any person:

(a) To fish for, take, or retain any salmon in violation of the Act or this part, including but not limited to the following:

(1) During closed seasons or in closed areas specified in Subpart B of this part;

(2) By means of gear or methods prohibited by Subpart B of this part;

(3) If such salmon are less than the minimum length specified in Subpart B of this part; or

(4) In number exceeding the limit for personal use fishing as specified in Subpart B of this part.

(b) To engage in fishing for salmon in the management area except to the extent authorized by § 674.4(a) of this part.

(c) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any salmon taken in violation of the Act, this part, or any other regulations issued under the Act.

(d) To refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulations issued under the Act.

(e) Forcibly to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (d) of this section.

(f) To resist a lawful arrest for any act prohibited by this part.

(g) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

(h) To transfer directly or indirectly, or attempt to so transfer, any salmon harvested by a vessel of the United States to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act which authorizes receipt by that foreign fishing vessel of salmon harvested by a vessel of the United States.

(i) To violate any other provision of the Act, this part, or any other regulation issued under the Act.

§ 674.8 Enforcement

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 674.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

Subpart B—Management Measures

§ 674.20 General.

The management measures prescribed in this subpart shall apply to all fishing for salmon in the management area.

§ 674.21 Time and area limitations.

(a) *Commercial fishing*—(1) *West area.* Commercial fishing for salmon is not permitted at any time.

(2) *East area.* Fishing periods in 1985 (Alaska Daylight Time) are as follows:

(i) All salmon species but coho—0001 hours June 3 to 2400 hours June 13; 0001 hours July 1 to 2400 hours July 14.

(ii) All salmon species—0001 hours July 15 until the combined commercial and recreational harvest reaches the harvest limit of chinook salmon.

(iii) All salmon species but chinook—from the time the combined commercial and recreational harvest reaches the harvest limit of chinook salmon until 2400 hours September 20.

(b) *Personal use fishing.* Personal use fishing in the east and west areas is permitted at all times.

(c) Fishing times, harvest limits, and areas prescribed in this section may be modified in accordance with section 7(a) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3636); or under § 674.23 of this part.

[46 FR 33047, June 26, 1981 and 46 FR 57302, Nov. 23, 1981, as amended at 50 FR 25248, June 18, 1985; 50 FR 28103, July 10, 1985]

§ 674.22 Catch limitations.

(a) *Size restrictions*—(1) *Minimum size limit*—(i) *Chinook salmon.* No chinook salmon less than 28 inches in length with the head on, or less than 23 inches in length with the head off, may be retained. (See Figure 1.)

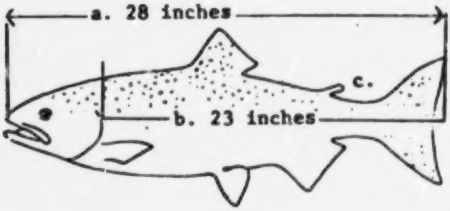

Figure 1. Chinook salmon with lines indicating: (a) the minimum legal length for a whole chinook salmon, (b) the minimum legal length for a chinook salmon with its head removed, and (c) the adipose fin.

(ii) *Other salmon.* There is no minimum size limit for coho, pink, chum or sockeye salmon.

(2) *Method of measurement.* For purposes of paragraph (a)(1)(i) of this section, a salmon with its head on shall be measured in a straight line from the tip of the snout to the midpoint of a straight line between the upper and lower tips of the tail in its natural open position. For the same purposes, a salmon with its head off shall be measured in a straight line from the midpoint of the cleithral (gill) arch to the midpoint of a straight line between the upper and lower tips of the tail in

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its natural open position. (See Figure 1.)

(3) *Mutilation.* No person in the management area shall mutilate or disfigure a chinook salmon in any manner that would interfere with the determination of that salmon's length in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *Personal use daily catch limit.* No person may catch and retain more than six (6) salmon during any day for personal use, and no more than three (3) of those salmon may be chinook salmon. No person in the management area may possess more than twelve (12) salmon for personal use, and no more than three (3) of these salmon may be chinook salmon.

(c) *Possession of prohibited salmon species.* When a part of the management area has been closed to fishing for a species of salmon, no person in that part of the management area may possess a salmon of that species while engaged in commercial fishing.

(d) *Landing requirements.* Every salmon satisfying minimum size limits that is caught in the management area which has had its adipose fin removed or clipped (See Figure 1) shall be retained and landed with its head on. This salmon shall be made available for retrieval of the coded wire tag by an appropriate official at the port of landing.

§ 674.23 Modifications of time and area limitations.

(a) *Standards governing modifications.* (1) Following consultation with ADF and G, the Secretary may modify the time and area limitations prescribed in § 674.21 of this part by issuing a field order in accordance with paragraph (b) of this section. Any such modification shall be based upon a determination by the Regional Director that:

(i) The condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP; and (ii) this difference reasonably requires a modification of time or area limitations if salmon of any species are to be adequately conserved and managed. In making this determination, the Regional Director may consider any of the following factors:

(A) The effect of overall fishing effort within any part of the management area;

(B) Catch-per-unit-of-effort and rate of harvest;

(C) Relative abundance of salmon stocks within the management area;

(D) Condition of salmon stocks throughout their ranges; and

(E) Any other factors relevant to the conservation of salmon.

(2) Following consultation with ADF and G, the Secretary shall prohibit fishing for any or all species of salmon in all or part of the management area if such a prohibition is necessary to prevent the total harvest of chinook salmon for the fishing season from exceeding either the maximum amount of the optimum yield or any other value within the optimum yield range for chinook salmon that the Secretary determines to be necessary for the conservation and management of chinook salmon. The Secretary will do this by issuing a field order in accordance with paragraph (b) of this section.

(b) *Field orders.* (1) Any field order issued by the Secretary under this section shall include the following:

(i) A description of the modification of time and area limitations;

(ii) The reasons for the modification; and

(iii) The effective date of the modification.

(2) No field order issued under this section may take effect until:

(i) It has been filed for publication with the FEDERAL REGISTER;

(ii) It has been posted for 48 hours, and otherwise made available to the public, in accordance with procedures customarily used by ADF and G for posting and publicizing similar notices of opening or closure;

(iii) It has been broadcast for 48 hours at those time intervals, channels and frequencies customarily used by ADF and G to broadcast similar notices of opening or closure; and

(iv) The public has been offered the opportunity to comment on the modification for a period of at least thirty (30) days, a final field order responding to any comments received has been published in the FEDERAL REGISTER, and a further waiting period of thirty (30) days has passed, unless the Secretary finds good cause for dispensing with these requirements in accordance with 5 U.S.C. 553.

(3) If the Secretary determines under 5 U.S.C. 553 that there is good cause for issuing a field order without affording prior opportunity for public comment, he shall receive and consider public comments for a period of thirty (30) days after the effective date of the field order. During this period, the Regional Director shall make available for public inspection during business hours the aggregate data upon which the modification effected by the field order was based. As soon as practicable after the end of this period, the Secretary shall reconsider the necessity of the modification, and shall publish in the FEDERAL REGISTER either a notice of the continued effectiveness of the field order or an amendment or rescission of the field order in accordance with the standards and procedures prescribed in this section, unless the field order has already expired or has been rescinded.

(4) Any field order issued under this section shall remain in effect until rescinded by the Secretary in accordance with the standards and procedures prescribed in this section, or until any expiration date stated in the field order, whichever is earlier.

[46 FR 33047, June 26, 1981, as amended at 46 FR 57302, Nov. 23, 1981; 48 FR 17359, Apr. 22, 1983]

§ 674.24 Gear restrictions.

(a) *Commercial fishing*—(1) Commercial fishing for salmon in the management area may be engaged in only through the use of power troll gear or hand troll gear.

(2) No vessel engaged in commercial fishing for salmon in the management area using power troll gear may at any one time utilize more than four (4) lines south of the line segments connecting the following points:

Latitude	Longitude
58°12′45″ N.	136°39′30″ W. (Cape Spencer)
58°12′45″ N.	138°00′ W.
58°00′ N.	138°00′ W.
58°00′ N.	143°33′36″ W.

North of these line segments, no vessel engaged in commercial fishing for salmon in the management area using power troll gear may at any one time utilize more than six (6) lines. No vessel that is equipped for use in commercial fishing for salmon using power troll gear may at any one time while in the management area have more than six (6) gurdies mounted and in operational condition.

(3) No vessel engaged in commercial fishing for salmon in the management area using hand troll gear may at any one time utilize more than two (2) lines and gurdies or four (4) sport rods; and no vessel that is equipped for use in such fishing may at any one time while in the management area have more than two (2) gurdies mounted and in operational condition.

(b) *Personal use fishing.* No person engaged in personal use fishing for salmon in the management area may at any one time utilize more than one (1) line held in the hand or attached to a hand-held or closely attended rod. This line may not at any one time have attached to it more than one (1) artificial lure or two (2) flies or two (2) single hooks.

[46 FR 57302, Nov. 23, 1981, as amended at 48 FR 34965, Aug. 2, 1983]

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Subpart A—General

Sec.
675.1 Purpose and scope.
675.2 Definitions.
675.3 Relation to other laws.
675.4 Permits.
675.5 Reporting requirements.
675.6 [Reserved]
675.7 General prohibitions.
675.8 Enforcement.
675.9 Penalties.

Sec.

Subpart B—Management Measures

675.20 General limitations.
675.21—675.25 [Reserved]

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 46 FR 63307, Dec. 31, 1981, unless otherwise noted.

Subpart A—General

§ 675.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of:

(1) The Bering Sea, and (2) the North Pacific Ocean adjacent to the Aleutian Islands west of 170°00′ W. longitude, over which the United States exercises exclusive fishery management authority under the Act.

(b) For regulations governing fishing in the Bering Sea and Aleutian Islands groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.93.

(c) These regulations implement the Bering Sea and Aleutian Islands groundfish fishery management plan developed by the North Pacific Fishery Management Council.

§ 675.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Magnuson Fishery Conservation and Management Act, Pub. L. 94-265, as amended, 16 U.S.C. 1801 through 1882.

ADF and *G* means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, United States Department of Commerce, or an individual to whom the Assistant Administrator for Fisheries has delegated appropriate authority.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(b) Any certified enforcement or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bering Sea and Aleutian Islands management area means the fishery conservation zone (FCZ) in the Bering Sea, and that portion of the FCZ in the North Pacific Ocean that is adjacent to the Aleutian Islands and west of 170°00′ W. longitude.

(a) The Bering Sea subarea of the management area means that portion of the FCZ contained in areas I, II, and III of Figure 1.

(b) The Aleutian Islands subarea of the mangement area means that portion of the FCZ contained in area IV of Figure 1.

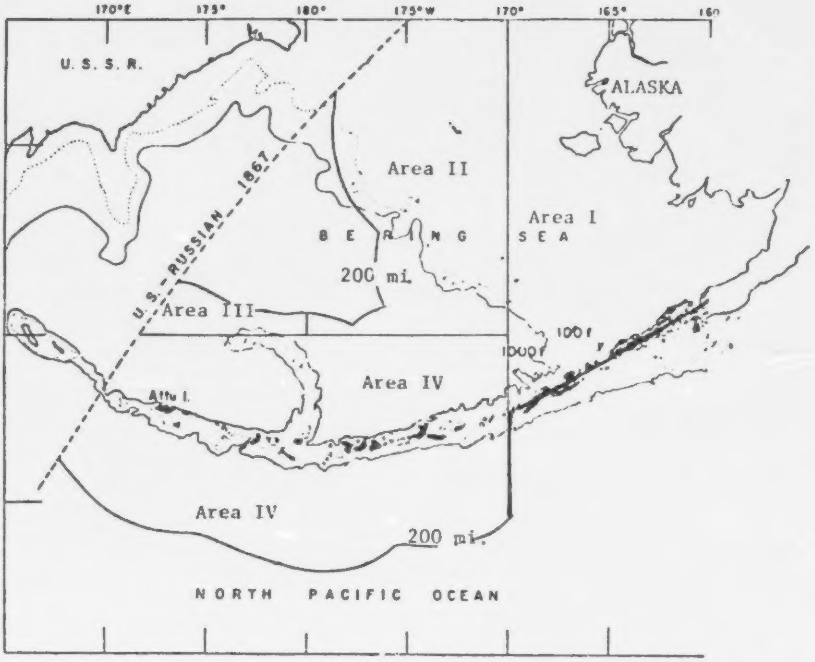
170°E
175°
180°
175°W
170°
165°
160
U. S. S. R.
ALASKA
60°
Area II
Area I
B E R I N G
S E A
U.S.-RUSSIAN 1867
200 mi
Area III
55°
100 f
1000 f
Attu I.
Area IV
50°
Area IV
200 mi.
N O R T H P A C I F I C O C E A N

Figure 1. Bering Sea and Aleutian Islands Management Area

(a) Bering Sea sub-area are areas I, II, and III.
(b) Aleutian Islands sub-area is area IV.

Fishery, for the purposes of this part, means all fishing for groundfish which is conducted in the Bering Sea and Aleutian Islands management area and adjacent territorial waters.

(a) The Bering Sea subarea of the fishery means areas I, II, and III of Figure 1.

(b) The Aleutian Islands subarea of the fishery means area IV of Figure 1.

Fishery Conservation Zone (*FCZ*) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Groundfish means pollock, cod, any species of flatfish, Pacific ocean perch, other rockfish, sablefish, Atka mackerel, squid, octopus; all other marine invertebrates except shrimp, scallops, snails, king crab, Tanner crab, Dungeness crab, horsehair crab, lyre crab, coral, and clams; and all other finfish except salmonids, Pacific herring, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogramma;*

Cod means *Gadus macrocephalus;*

Arrowtooth flounder means *Atheresthes stomias;*

Other flatfish means Pleuronectiformes (order) not specifically defined;

Yellowfin sole means *Limanda aspera;*

Rock sole means *Lepidopsetta bilineata;*

Flathead sole means *Hippoglossoides elassodon;*

Greenland halibut means *Reinhardtius hippoglossoides;*

Pacific ocean perch means *Sebastes alutus, S. polyspinus, S. aleutianus, S. borealis,* and *S. Zacentrus;*

Atka mackerel means *Pleurogrammus monopterygius;*

Other rockfish means Scorpaenidae (family) not specifically defined;

Sablefish means *Anoplopoma fimbria;*

Squid means sepioid and teuthoid squid;

Octopus means Octopoda, not specifically defined;

Salmonids means of the family Salmonidae;

Pacific halibut means *Hippoglossus stenolepis;*

Pacific herring means *Clupea harengus pallasi.*

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached, or the taking of fish by means of such a device.

Operator, with respect to any vessel, means the master of other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel; or

(d) Any agent designated as such by any person in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such government.

Regional Director means Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or an individual to whom the Regional Director has delegated appropriate authority.

Secretary means the Secretary of Commerce, or his or her designee.

Trawl means a bag-shaped net dragged through the water to capture fish.

Vessel of the United States means

(a) A vessel documented or numbered by the Coast Guard under United States law; or

(b) A vessel weighing less than five net tons which is registered under the laws of any state.

United States fish processors means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

United States-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Act.

§ 675.3 Relation to other laws.

(a) *Federal law.* For regulations governing fishing by vessels of the United States for halibut, see the regulations of the International Pacific Halibut Commission. For regulations governing fishing for Tanner crab, see 50 CFR Part 671; for those governing fishing for groundfish in the Gulf of Alaska, see 50 CFR Part 672; for those governing salmon fishing off Alaska, see 50 CFR Part 674; for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR 216.24.

(b) *State law.* Certain responsibilities relating to the issuance of permits, data collection, and enforcement may be performed by personnel of the State of Alaska under an agreement with NOAA/NMFS and the United States Coast Guard.

§ 675.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands management area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(b) *Application.* A vessel owner may obtain a permit required under the preceding paragraph by submitting to the Regional Director a written application containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or state registration number;

(4) The home port of the vessel;

(5) The length of the vessel;

(6) The type of fishing gear to be used; and

(7) The signature of the applicant.

The Regional Director may accept a completed State of Alaska commercial fishing license application in satisfaction of the requirements paragraph (b) of this section.

(c) *Issuance.* (1) Except as provided in Subpart D of 15 CFR Part 904, upon receipt of a properly completed application, the Regional Director will issue a permit required by paragraph (a) of this section.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section shall give written notification of any change in the information provided uder paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit issued under this section shall authorize the permitted vessel to fish for groundfish in the Bering Sea and Aleutian Islands management area during a single specified year, and shall continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified pursuant to Subpart D of 15 CFR 904.

(f) *Alteration.* No person shall alter, erase, or mutilate any permit issued under this section. Any such permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this section are not transferable or assignable. Each such permit shall be valid only for the vessel for which it is issued. The Regional Director must be notified of a change in ownership, pursuant to paragraph (d) of this section.

(h) *Inspection.* Any permit issued under this section must be carried aboard the vessel whenever the vessel is fishing for groundfish in the Bering Sea and Aleutian Islands management area. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(Approved by the Office of Management and Budget under control number 0648-0097)

[46 FR 63307, Dec. 31, 1981, as amended at 48 FR 34763, Aug. 1, 1983; 49 FR 1044, Jan. 6, 1984]

§ 675.5 Reporting requirements.

(a) *Fishing vessel reporting requirements*—(1) *Port of landing outside Alaska.* The operator of any fishing vessel regulated under this part whose port of landing is outside the State of Alaska shall submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket. This information must be submitted to ADF and G within one week after the date of each sale or delivery not at sea of any groundfish taken in the Bering Sea and Aleutian Islands management area. The address to which these documents must be sent is: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Subport Building, Juneau, Alaska 99801.

(2) *Sale, delivery, or consumption at sea.* (i) For each consumption or sale or delivery to a United States fish processor at sea of unlanded groundfish taken in the Bering Sea and Aleutian Islands management area, the operator of any fishing vessel regulated under this part shall submit the following information to ADF and G:

(A) A completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket; and

(B) A statement indicating whether or not the vessel to which any sale or delivery was made was a vessel of the United States.

(ii) The information required by paragraph (a)(2)(i) of this section shall be submitted to ADF and G within one week of the first return of that vessel to port following such sale, delivery, or consumption. Such information may be submitted by the United States fish processor to which the sale or delivery at sea was made, acting as the agent of the fishing vessel operator.

(b) *Processor reporting requirements.* When requested by the Regional Director, but not more than four times a year, each United States fish processor who intends to process United States harvested groundfish taken in the Bering Sea and Aleutian Islands management area shall complete a written survey received from the Regional Director to include the following information:

(1) The quantity of groundfish that the processor has the capacity to process during the following six-month period; and

(2) The quantity of United States-harvested groundfish from the Bering Sea and Aleutian Islands management area that the processor expects to process during the following six-month period.

(Paragraph (a) approved by the Office of Management and Budget under control number 0648-0016 and paragraph (b) under control number 0648-0014)

[46 FR 63307, Dec. 31, 1981, as amended at 48 FR 34763, Aug. 1, 1983]

§ 675.6 [Reserved]

§ 675.7 General prohibitions.

It shall be unlawful for any person to:

(a) Fish for groundfish in the Bering Sea and Aleutian Islands management area with a vessel of the United States which does not have aboard a valid permit issued pursuant to this part;

(b) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any fish taken or retained in violation of the Act, this part, or any other regulation or permit issued under the Act;

(c) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this part, or any other regulation or permit issued under the Act;

(d) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (c) of this section;

(e) Resist a lawful arrest for any act prohibited by this part;

(f) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by this part;

(g) Violate any other provision of this part, the Act, or any other regulation or permit issued under the Act.

§ 675.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

§ 675.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

Subpart B—Management Measures

§ 675.20 General limitations.

(a) *OY, TAC, Reserve, DAH, and TALFF*—(1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this section and by 50 CFR § 611.93 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the Bering Sea and Aleutian Islands management area, to the extent this amount can be harvested consistently with this part and 50 CFR Part 611, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

TABLE 1—1985 INITIAL TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. TAC = DAP + JVP + TALFF

Species	Species code	Areas	TAC	DAH	DAP	JVP	Reserve	TALFF
Bering Sea and Aleutian Islands Groundfish Fishery:								
Pollock	701	Bering Sea	1,200,000	411,264	17,680	393,584		608,736
		Aleutians	100,000	24,506	10,540	13,966		60,494
POP	780	Bering Sea	1,000	780	660	120		220
		Aleutians	3,800	3,640	3,300	340		160
Other rockfish	849	Bering Sea	1,120	622	600	22		330
		Aleutians	5,500	990	30	960		3,685
Sablefish	703	Bering Sea	2,625	2,375	2,275	100		250
		Aleutians	1,875	1,725	1,305	420		150
Yellowfin sole	720		226,900	83,970	1,770	82,200		108,895
Turbots	721,118		42,000	5,000	0	5,000		30,700
Other flatfishes	129		109,900	63,700	1,200	62,500		41,365
Pacific cod	702		220,000	163,190	100,000	63,190		37,000
Atka mackerel	207		37,700	37,600	0	37,600		100
Squid	509		10,000	70	0	70		8,430
Other species	499		37,580	3,000	0	3,000		28,943
Totals			2,000,000	802,432	139,360	663,072	[1] 268,110	929,458

[1] Fifteen percent of the total TAC, or 300,000 mt, is apportioned to the initial operational reserve; 31,890 mt of reserve is apportioned to JVP and TALFF, effective January 1, 1985.

(2) *TAC.* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the total allowable catch (TAC) for each calendar year for each target species and for the "other species" category. The sum of the TACs established must be within the OY range of 1.4-2.0 million mt for target species and the "other species" category.

(i) The annual determination of the TAC for each target species and the "other species" category, the exceeding of these species' TACs through the apportionment of reserves, and the reapportionment of surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) will be based upon and be consistent with two types of information:

(A) Biological condition of groundfish stocks as set forth in the resource assessment documents prepared annually for the Council. These documents will provide information on historical catch trend; updated estimates of the maximum sustainable yield of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the "other species" category; assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

(B) Socioeconomic considerations that are consistent with the goals of the fishery management plan for the groundfish fishery of the Bering sea and Aleutian Islands area, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries which utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commerical importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

(4) *DAH.* (i) The initial amounts for the two components of DAH, i.e., expected domestic annual processing (DAP) and U.S. harvest authorized for delivery to foreign processors (JVP), will be determined each year by the Regional Director. The DAP and JVP amounts for each target species and for the "other species" category equals the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming fishing year. This projection will be based upon the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S. fishing industry.

(ii) The DAH for the "nonspecified species" category equals the amount of that category caught during the fishing year while harvesting the DAH for the target species and "other species" categories.

(5) *TALFF.* The TALFF for each target species and for the "other species" category at the beginning of the fishing year is 85 percent of each TAC minus DAH. The TALFF for the "nonspecified species" category equals the amount caught during the fishing year while harvesting the TALFF for the target species and "other species" categories.

(6) *Rule-related notice.* As soon as is practicable after October 1 of each year, the Secretary, after consultation with the Council, shall publish a rule-

related notice in the FEDERAL REGISTER specifying preliminary TAC, Reserve, DAP, JVP, and TALFF amounts for each target species and for the "other species" category for the next calendar year. Public comment on these amounts will be accepted by the Secretary for a period of 30 days after the amounts have been published in the FEDERAL REGISTER. The Secretary shall consider all timely comments when determining, after consultation with the Council, the final annual TAC, initial DAH, and initial TALFF for each target species and the "other species" category for the next year. These figures will be published as a rule-related notice in the FEDERAL REGISTER as soon as practicable after December 15 and made available to the public through other suitable means by the Regional Director.

(7) When the combined catch by foreign and U.S. vessels in the fishery or applicable sub-area of the fishery reaches the amount of a target species or the "other species" category that is apportioned to the fishery, further fishing by U.S. vessels that involves the taking of that species is prohibited in the management area or applicable sub-area for the remainder of the fishing year.

(b) *Apportioning the reserve and surplus DAH*—(1) *Dates*—(i) *Reserve to DAH and TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary shall by rule-related notice apportion to DAH and TALFF all or part of the reserve in accordance with paragraphs (a)(3) and (b)(2) of this section. The Secretary shall apportion to DAH the amount of reserve that he finds will be harvested by U.S. vessels during the remainder of the year and shall apportion to TALFF the remaining portion of the reserve that will not be apportioned to DAH, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

(ii) *DAH to TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary shall, by rule-related notice, reassess and reapportion to TALFF the part of DAH that he determines will not be harvested by U.S. vessels during the remainder of the fishing year, unless such reapportionments to TALFF would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

(2) *Procedure.* (i) The Secretary shall provide all interested persons an opportunity to comment on the proposed apportionments or retentions under paragraph (b)(1) of this section before such apportionments or retentions are made, unless he finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefor in the rule-related notice of apportionment and/or retention. No apportionment or retention may take effect until it has been published in the FEDERAL REGISTER as a rule-related notice with a statement of the findings upon which the apportionment or retention is based. Comments provided for in this paragraph must be received by the Secretary not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified. If the Secretary determines for good cause that a rule-related notice of apportionment and/or retention must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment or retention will be received for a period of 15 days after its effective date. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or retention or to modify an apportionment or retention that has previously been made, and shall publish responses to those comments in the FEDERAL REGISTER as soon as practicable.

(ii) Comments provided for in paragraphs (a)(6) and (b)(2)(i) of this section should be addressed to Director, AK Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. The Regional Director will make available to the public during business hours the aggregate data upon which any preliminary TAC, DAH, or TALFF figure is based or the data upon which any apportionment or retention of surplus DAH or reserve was or is proposed to be based at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska. These data will be available for a sufficient period to facilitate informed comment by interested persons.

(c) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish in the Bering Sea and Aleutian Islands management area, the retention of which is prohibited by other applicable law. Any catch of Pacific halibut by fishing vessels regulated under this part is a catch of a prohibited species, unless retention is authorized by regulations of the International Pacific Halibut Commission. Any catch of Tanner crab or salmon by vessels regulated under this part is catch of a prohibited species.

(2) The operator of each vessel regulated under this part shall minimize its catch of prohibited species.

(3) The operator of each vessel regulated under this part shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(4) It shall be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulated under this part was caught and retained in violation of this section.

(d) The Secretary of Commerce shall make appropriate arrangements to place observers aboard U.S. trawl vessels operating in the Winter Halibut Savings Area from December 1 through May 31. The Winter Halibut Savings Area is bounded by straight lines connecting the following coordinates in the order listed:

Latitude	*Longitude*
54°36′ N.	164°55′42″ W. (Cape Sarichef Light)
54°48′ N.	170°00′ W.
55°30′ N.	170°00′ W.
55°30′ N.	166°47′ W.
56°00′ N.	167°45′ W.
56°00′ N.	166°00′ W.
56°30′ N.	166°00′ W.
56°30′ N.	163°00′ W.
55°16′ N.	166°10′ W.
54°36′ N.	164°55′42″ W.

[46 FR 63307, Dec. 31, 1981, as amended at 49 FR 400, Jan. 4, 1984; 49 FR 2472, Jan. 20, 1984; 50 FR 11373, Mar. 21, 1985]

§§ 675.21—675.25 [Reserved]

PART 676—KING CRAB FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Subpart A—General Measures

Sec.

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676.2 Definitions.
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676.20 Initial implementation of the FMP.
676.21 New State laws and regulations.
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676.23 Amendment of the FMP.
676.24 Reservation of Secretarial authority to supersede or supplement.

AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 49 FR 45002, Nov. 14, 1984, unless otherwise noted.

Subpart A—General Measures

§ 676.1 Purpose and scope.

(a) Regulations in this part govern fishing for king crab by vessels of the United States within the Bering Sea and Aleutian Islands area.

(b) Subject to the other provisions of this part, the State of Alaska is delegated authority to implement its role described in the Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Islands Area (FMP).

(c) Subject to other requirements of law, this part takes effect upon receipt by the Secretary of a statement signed by the Governor of the State of Alaska accepting the provisions of this part on behalf of the State and identifying the agencies that will exercise the authority to implement the FMP delegated by paragraph (b) of this section (designated agency).

§ 676.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bering Sea and Aleutian Islands area means those waters outside the State of Alaska lying south of the Bering Strait and east of the U.S.-U.S.S.R. Convention line of 1867, and extending south of the Aleutian islands for 200 miles between the Convention line and 164°47'30" W. longitude.

Council means the North Pacific Fishery Management Council, 411 West Fourth Avenue, Suite D, Anchorage, AK 99510, telephone 907-274-4563.

Designated agency means one or more agencies designated by the Governor of the State of Alaska under § 676.1(c) of this part.

Fish includes king crab.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which reasonably can be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) through (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

Fishery management plan (FMP) means the Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Island Area.

King crab means the following species of the family Lithodidae:

(a) *Paralithodes camtschatica*, red king crab;

(b) *Paralithodes platypus*, blue king crab; and

(c) *Lithodes aequispina*, brown or golden king crab.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Regional Director means the Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, telephone 907-586-7221.

Secretary means the Secretary of Commerce.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel nunbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 676.3 Relation to other laws.

(a) *Federal law.* For regulations governing fishing by vessels of the United States for halibut, see regulations of the International Pacific Halibut Commission at 50 CFR Part 301; for those governing fishing for groundfish off Alaska, see 50 CFR Parts 672 and 675; for those governing salmon fishing off Alaska, see 50 CFR 674; for those governing fishing for Tanner crab, see 50 CFR Part 671; and for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR Part 216.

(b) *State law.* Each law and regulation of the State of Alaska approved by NOAA under this part will be proposed for incorporation by reference in the FEDERAL REGISTER in accordance with 1 CFR Part 51. Those State laws and regulations that are approved by the Director of the Federal Register for incorporation by reference under 1 CFR Part 51 will be listed at § 676.25. Other laws and regulations of the State that are approved by NOAA under this part will be reprinted in the FEDERAL REGISTER. Laws of the State of Alaska that may be approved by NOAA under this part are codified in Title 16 of the *Alaska Statutes.* Regulations of the State of Alaska that may be approved by NOAA under this part are codified in Title 5 of the *Alaska Administrative Code.* Copies of these laws and regulations may be obtained from the Alaska Department of Fish and Game, Commercial Fisheries Division, P.O. Box 3-2000, Juneau, AK 99802, telephone 907-465-4210.

§ 676.4 Permits.

(a) *General.* No vessel of the United States may fish for king crab in the Bering Sea and Aleutian Islands area without first obtaining a permit issued under this section. Each such permit will be issued without charge.

(b) *Application.* A vessel owner may obtain a permit required under the preceding subsection by submitting to the Regional Director a written application containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The length of the vessel;

(6) The type of fishing gear to be used; and

(7) The signature of the applicant.

The Regional Director may accept a completed State of Alaska commercial fishing license application in satisfaction of the requirements of this subsection.

(c) *Issuance.* (1) Upon receipt of a properly completed application, the Regional Director will issue the permit required by paragraph (a) of this section.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit issued under this section authorizes the permitted vessel to fish for king crab in the Bering Sea and Aleutian Islands area during a single specified year, and continues in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under 15 CFR Part 904 Civil Procedures).

(f) *Alteration.* No person may alter, erase, or mutilate any permit issued under this section. Any such permit that has been intentionally altered, erased, or mutilated will be invalid.

(g) *Transfer.* Permits issued under this section are not transferable or assignable. Each such permit is valid only for the vessel for which it is issued. The Regional Director must be notified of a change in ownership under paragraph (d) of this section.

(h) *Inspectimn.* Any permit issued under this section must be carried aboard the vessel whenever the vessel is fishing for king crab in the Bering Sea and Aleutian Island area. The permit must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 15 CFR Part 904 (Civil Procedures) governs the imposition of permit sanctions against a permit issued under this section. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Magluson Act or this part; and such a permit must be revoked if a civil penalty or criminal fine imposed under the Magnuson Act and pertaining to a permitted vessel is not paid.

(Approved under OMB control number 0648-0097)

[49 FR 45002, Nov. 14, 1984, as amended at 49 FR 47006, Nov. 30, 1984]

§ 676.5 General prohibitions.

It is unlawful for any person to—

(a) Fish for king crab in the Bering Sea and Aleutian Islands area, except as allowed by this part, or the laws and regulations of the State of Alaska approved under this part at the time such fishing occurs;

(b) Fish for king crab in the Bering Sea and Aleutian Islands area without, or in violation of, a valid permit issued under this part;

(c) Violate any other provision of the Magnuson Act or this part, or other applicable laws;

(d) Fail to comply immediately with enforcement and boarding procedures specified in § 676.6 of this part;

(e) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any king crab taken or retained in violation of the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part;

(f) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part;

(g) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f) of this section;

(h) Resist a lawful arrest for any act prohibited by the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part; or

(i) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such person, has committed any act prohibited by the Magnuson Act, this part, any permit issued under this part, or any law or regulation of the State of Alaska approved under this part.

§ 676.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel and its gear, equipment, fishing record (where applicable), and catch for purpose of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signs, placards or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the autorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communication by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (. — . —) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (. — . —. — — . — . — — . — —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . — — . — . . . — —) means "you should stop or heave to; I am going to board you."

(4) "L" (. — . .) means "you should stop your vessel instantly."

§ 676.7 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty, permit sanction, and forfeiture provisions of the Magnuson Act, to 15 CFR Part 904 (Civil Procedures), and to other applicable law.

[49 FR 45002, Nov. 14, 1984, as amended at 49 FR 47006, Nov. 30, 1984]

Subpart B—Management Measures

§ 676.20 Initial implementation of the FMP.

After promulgation of this part, the Secretary will publish in the FEDERAL REGISTER a notice of approval which specifies the laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect that he finds to be inconsistent with the FMP; declares that the laws and regulations so specified cease to govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; declares that all laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect that are not so specified are approved under this part and govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and states the findings and conclusions upon which the Secretary's action is based. The Secretary will not publish the notice provided for in this section until interested persons have been afforded a period of at least 45 days in which to comment on laws and regulations of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area then in effect and the consistency of those laws and regulations with the FMP. The statement of findings and conclusions contained in the notice published under this section must respond to the comments received during this period. The Secretary will publish the notice provided for in this

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[1] Period (.) means a short flash of light.

[2] Dash (—) means a long flash of light.

section after he has consulted with Council concerning his action and the findings and conclusions upon which it is based.

§ 676.21 New State laws and regulations.

(a) *New State laws.* (1) Within 30 days after final enactment of a law of the State of Alaska governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in § 676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a notice requesting comments by any interested person on that law and whether it is consistent with the FMP. Interested persons will have the opportunity to submit comments for a period of at least 45 days after publication of the notice requesting comments.

(2) Within 120 days after final enactment of a law referred to in paragraph (a)(1) of this section, and after consultation with the Council, the Secretary will publish in the FEDERAL REGISTER a notice of approval which—

(i) Specifies any provision of that law that he finds to be inconsistent with the FMP;

(ii) Declares that any provision so specified does not govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska;

(iii) Declares that all provisions of that law which are not so specified are approved under this part and will govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and

(iv) States the findings and conclusions upon which the Secretary's action is based, responding to comments received under the notice provided for in paragraph (a)(1) of this section.

(3) A law referred to in paragraph (a)(1) of this section will govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel registered under the laws of the State of Alaska, until the Secretary publishes the notice provided for in paragraph (a)(2) of this section. If a law or regulation of the State of Alaska that was previously approved under this part conflicts with a law governing fishing for king crab in the Bering Sea and Aleutian Islands area under this paragraph, the previously approved law or regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a notice under paragraph (a)(2) of this section disapproving the conflicting provisions of the new law, the previously approved law or regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

(b) *New State regulations.* (1) As soon as practicable after the designated agency of the State of Alaska publishes for public comment a proposed regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in § 676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a notice requesting comments by any interested person on that proposal and whether it is consistent with the FMP. The notice will require that such comments be submitted to the designated agency in accordance with the agency's administrative procedures. It will explain that the Secretary will determine whether any such proposed regulation that may be adopted by that agency is consistent with the FMP on the basis of the administrative record developed before that agency.

(2) Within 45 days after the adoption by the designated State agency of a proposed regulation referred to in paragraph (b)(1) of this section and after consultation with the Council, the Secretary will publish in the FEDERAL REGISTER a notice of approval which—

(i) Specifies any provision of that regulation that he finds to be inconsistent with the FMP;

(ii) Declares that any provisions so specified do not govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska;

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(iii) Declares that all provisions of that regulation that are not so specified are approved under this part and govern all fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel, whether or not it is registered under the laws of the State of Alaska; and

(iv) States the findings and conclusions upon which the Secretary's action is based. The statement of findings and conclusions contained in the notice published under this paragraph will be based upon the administrative record developed before the designated agency of the State of Alaska and will respond to relevent points raised in comments submitted to that agency on the proposed regulation.

(3) A regulation referred to in paragraph (b)(1) of this section may govern fishing for king crab in the Bering Sea and Aleutian Islands area by any vessel registered under the laws of the State of Alaska, until the Secretary publishes the notice provided for in paragraph (b)(2) of this section. If a regulation of the State of Alaska that was previously approved under this part conflicts with a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands are under this paragraph, the previously approved regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a notice under paragraph (b)(2) of this section disapproving the conflicting provisions of the new regulation, the previously approved regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

(4) As soon as practicable after the designated agency of the State of Alaska adopts, without opportunity for public comment, a regulation establishing an inseason management measure or emergency action governing fishing for king crab in the Bering Sea and Aleutian Islands area that was not in effect when the notice provided for in § 676.20 of this part was published, the Secretary will publish in the FEDERAL REGISTER a notice of approval having the content prescribed for a notice published under paragraph (b)(2) of this section. A regulation referred to in this paragraph may govern fishing for king crab in the Bering Sea and Aleutian Islands area by vessels registered under the laws of the State of Alaska until the Secretary publishes the notice provided for in this paragraph. If a regulation of the State of Alaska that was previously approved under this part conflicts with a regulation governing fishing for king crab in the Bering Sea and Aleutian Islands area under the second sentence of this paragraph, the previously approved regulation will cease to be approved under this part with respect to vessels registered under the laws of the State of Alaska. When the Secretary publishes a notice provided for in this paragraph disapproving the conflicting provisions of the new regulation, the previously approved regulation will once again be considered approved under this part with respect to vessels registered under the laws of the State of Alaska.

§ 676.22 Reconsideration of a final notice by the Secretary.

Within ten days after publication in the FEDERAL REGISTER of a notice of final action by the Secretary under § 676.20 or 676.21 of this part, any person may request the Secretary to reconsider and change that action. The request will specify the proposed change in the action, and the reasons that change is believed to be necessary. The request will not be considered to have been made until it has been received at the address specified in the notice of the action. Within 30 days after publication of the notice of final action in the FEDERAL REGISTER, the Secretary will grant or deny all requests for reconsideration of that action that have been made, and will promptly publish a notice of such grant or denial in the FEDERAL REGISTER.

§ 676.23 Amendment of the FMP.

The procedures of §§ 676.20 and 676.22 for initial review and approval of existing laws and regulations of the State of Alaska will be repeated upon each implementation of any amendment of the FMP.

§ 676.24 Reservation of Secretarial authority to supersede or supplement.

The Secretary, after consultation with the Council, may promulgate ald amend such other regulations as may be necessary to implement the FMP fully, in accordance with other requirements of law. This includes regulations superseding or supplementing any State law or regulation disapproved under §§ 676.20, 676.21, or 676.22 of this part.

PART 680—WESTERN PACIFIC PRECIOUS CORALS

Subpart A—General Provisions

Sec.

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 39231, Aug. 30, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 680.1 Purpose and scope.

(a) The purpose of this part is to implement the Precious Coral Fishery Management Plan developed by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act. (Magnuson Act).

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the fishery conservation zone seaward of Hawaii, Guam, and American Samoa.

(c) For regulations governing fishing for precious coral by foreign vessels, see 50 CFR 611.82.

§ 680.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(d) Any operations at sea in support of or in preparation of any activity described in paragraphs (a) through (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

Land or landing means bringing fish to shore or off-loading fish from a vessel.

Live coral means any precious coral that is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Non-precious coral means any species of coral other than those listed under the definition for *precious coral.*

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the designation, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Management area means the FCZ of the United States seaward of the State of Hawaii; the Territory of Guam, and the Territory of American Samoa.

Permit area is used to describe each precious coral bed in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(a) *Established beds.*

Makapuu (Oahu), *Permit Area E-B-1,* includes the area within a radius of 2.0 nautical miles of a point at 21°18.0′ N. latitude, 157°35.5′ W. longitude.

(b) *Conditional beds.* (1)*Ke-ahole Point* (Hawaii), *Permit Area C-B-1,* includes the area within a radius of 0.5 nautical miles of a point at 19°46.0′ N. latitude, 156°06.0′ W. longitude.

(2) *Kaena Point* (Oahu), *Permit Area C-B-2,* includes the area within a radius of 0.5 nautical miles of a point at 21°35.4′ N latitude, 153°22.9′ W. longitude.

(3) *Brooks Bank, Permit Area C-B-3,* includes the area within a radius of 2.0 nautical miles of a point at 24°06.0′ N. Latitude, 166°48.0′ W. longitude.

(4) *180 Fathom Bank, Permit Area C-B-4,* N.W. of Kure Atoll, includes the area within a radius of 2.0 nautical miles of a point at 28°50.2′ N. latitude, 178°53.4′ W. longitude.

(c) *Refugia. Westpac Bed, Permit Area R-1,* includes the area within a radius of 2.0 nautical miles of a point at 23°18.0′ N. latitude, 162°35.0′ W. longitude.

(d) *Exploratory areas.* (1) *Permit Area X-P-H* includes all coral beds, other than established beds, conditional beds, or refugia, in the FCZ seaward of the State of Hawaii.

(2) *Permit Area X-P-AS* includes all coral beds, other than established beds, conditional beds, or refugia, in the FCZ seaward of American Samoa.

(3) *Permit Area X-P-G* includes all coral beds, other than established beds, conditional beds, or refugia, in the FCZ seaward of Guam.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government, or any entity of any such government.

Precious coral means any of the following species of corals:

Pink coral (also known as red coral), *Corallium secundum*
Pink coral (also known as red coral), *Corallium regale*
Pink coral (also known as red coral), *Corallium laauense*
Gold coral, *Gerardia sp.*
Gold coral, *Callogorgia gilberti*
Gold coral, *Narella sp.*
Gold coral, *Calyptrophora sp.*
Bamboo coral, *Lepidisis olapa*
Bamboo coral, *Acanella sp.*
Black coral, *Antipathes dichotoma*
Black coral, *Antipathes grandis*
Black coral, *Antipathes ulex*

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

State means the State of Hawaii, the Territory of Guam, and the Territory of American Samoa.

U.S. fish processors means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

U.S.-harvested coral means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

Vessel of the United States means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 680.3 Relation to other laws.

This part recognizes that any State law pertaining to vessels registered under the laws of that State, including any State landing laws, which is consistent with the Precisous Coral Management Plan, will continue to have force and effect respecting fishing activities addressed herein.

§ 680.4 Permits.

(a) *General.* (1) Any vessel of the United States fishing for, taking, or retaining precious coral in the management area must have a permit issued under this section.

(2) Each permit will be valid for fishing only in the permit area specified in the permit. Permit areas are described in § 680.2.

(3) No more than one permit will be valid for any one vessel at any one time.

(4) No more than one permit will be valid for any one person at any one time.

(5) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit issued under this section.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Each applicant must supply the following information to the Regional Director when applying for a permit. Each application must be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name, mailing address, and telephone number;

(ii) The owner's name, mailing address, and telephone number;

(iii) The operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The vessel's U.S. Coast Guard documentation number or State license number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) The engine horsepower of the vessel;

(ix) The approximate fish-hold capacity of the vessel;

(x) The type and quality of fishing gear used by the vessel;

(xi) The permit area in which the applicant proposes to fish;

(xii) Whether the application is for a new permit or a renewal; and

(xiii) The number and expiration date of any prior permit for the vessel issued under this section.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days prior to the effective date of the change.

(e) *Issuance.* (1) Within 60 days after receipt of a properly completed application the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire on June 30 following the effective date of the permit.

(g) *Renewal.* An application for a renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit which has been substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit will not be considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for coral in the FCZ. Any permit issued under this section must be displayed for inspection upon request of any authorized officer.

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(Approved by the Office of Management and Budget under control number: 0648-0097)

[48 FR 39231, Aug. 30, 1983, as amended at 49 FR 1044, Jan. 6, 1984]

§ 680.5 Recordkeeping and reporting.

(a) *Logbook.* The operator of any fishing vessel fishing for precious coral subject to this part must—

(1) Maintain on board the fishing vessel, while fishing for precious coral, an accurate and complete fishing logbook in the required format supplied by the Regional Director, recording all information specified in paragraph (b) of this section with all information entered by midnight of the day following the day on which the coral was taken;

(2) Make the fishing logbook available for inspection by an authorized officer or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspection;

(3) Keep the fishing logbook one year after the date of the last entry in the logbook; and

(4) Within 72 hours of each landing of precious coral, submit to the Regional Director a copy of the log sheet(s) pertaining to that precious coral.

(b) *Information.* Fishing logbooks must contain the following information for all precious coral taken under this part:

(1) *Vessel information.*

(i) Name of vessel;

(ii) Call sign of vessel; and

(iii) Permit number of vessel.

(2) *Fishing information.*

(i) Date of harvest;

(ii) Fishing effort in hours;

(iii) Method of harvest;

(iv) Area fished;

(v) Depth of water;

(vi) Weight of coral harvested, by species, to the nearest tenth of a kilogram (landed weight, air dried for at least 24 hours); and

(vii) Observations that may be made about the habitat (current, bottom type, bottom topography, bottom slope, proximity to land, etc.).

(3) *Sale information.*

(i) Amount of coral sold (by species);

(ii) Sale price;

(iii) Date of sale;

(iv) Name(s) and address(es) of buyer(s); and

(4) Any other information specified in the permit.

(Approved by the Office of Management and Budget under control number: 0648-0016)

§ 680.6 Vessel identification.

(a) *Permit number.* Each fishing vessel subject to this part must display its permit number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The permit number must be affixed to each vessel subject to this part in block Arabic numerals at least 14 inches in height for fishing vessels of 65 feet in length or longer and at least ten inches in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part must—

(1) Keep the displayed permit number legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the permit number from an enforcement vessel or aircraft.

§ 680.7 Prohibitions.

(a) It is unlawful for any person to—

(1) Use any vessel to fish for, take, or retain precious coral in the management area unless a permit has been issued for that vessel and area as specified in § 680.4 and that permit is on board the vessel;

(2) Fish for, take, or retain any species of precious coral in the management area:

(i) By means of gear or methods prohibited by § 680.25;

(ii) In refugia specified in § 680.24;

(iii) In a bed for which the quota specified in § 680.21 has been attained; or

(iv) In violation of any permit issued under § 680.4;

(3) Take and retain or possess on fishing vessels any pink coral from the Makapuu Bed (Permit Area E-B-1), Ke-ahole Point Bed (Permit Area C-B-1), or Kaena Point Bed (Permit Area C-B-2) which is less than the minimum height specified in § 680.23.

(4) Falsify or fail to make, keep, maintain, or submit any logbook or other record or report required by § 680.5;

(5) Fail to affix and maintain vessel markings, as required by § 680.6;

(6) Fail to comply immediately with enforcement and boarding procedures specified in § 680.8;

(7) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of precious coral which was taken in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act;

(8) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulations issued under the Magnuson Act;

(9) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (e) of this section;

(10) Resist a lawful arrest for any act prohibited by this part;

(11) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person by an authorized officer, knowing that such other person has committed any act prohibited by this part; or,

(12) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested coral to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested coral of the species concerned;

(13) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(b) It is a rebuttable presumption that any precious coral found on board a fishing vessel in the management area was caught and retained in violation of this part. The presumption can be rebutted by showing that—

(1) A valid permit was issued for the vessel, which was operating under the terms of the permit, or

(2) The coral originated outside the management area through receipts of purchase, invoices, or other documentation.

§ 680.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1, 2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 680.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

Procedures), and any other applicable law.

[50 FR 39396, Sept. 30, 1985]

Subpart B—Management Measures

§ 680.20 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a two-year fishing period that begins July 1 and ends June 30 two years later.

§ 680.21 Quotas.

(a) The quotas limiting the amount of precious coral that may be taken in the management area during the fishing year are listed in Table 1 of this section. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

TABLE 1—QUOTAS FOR PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota [a]	Number of years	Gear restrictions [d]
Makapuu	Established	Pink coral—2,000 kg	2	S
		Gold coral—600 kg	2	S
		Bamboo coral—600 kg	2	S
Ke-ahole Point	Conditional	Pink coral—67 kg	1	S
		Gold coral—20 kg	1	S
		Bamboo coral—17 kg	1	S
Kaena Point	Conditional	Pink coral—67 kg	1	S
		Gold coral—20 kg	1	S
		Bamboo coral—17 kg	1	S
Brooks Bank [b]	Conditional	Pink coral [b]—17 kg	1	N
		Gold coral—133 kg	1	N
		Bamboo coral—111 kg	1	N
180 Fathom Bank [b]	Conditional	Pink coral [b]—222 kg		N
		Gold coral—67 kg	1	N
		Bamboo coral—56 kg	1	N
Westpac Bed	Refugia	Zero (0 kg)		(e)
Hawaii, American Samoa, Guam	Exploratory [c]	1,000 kg (all species combined except black corals) per area.	1	N

[a] There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§ 680.5). State regulations on black coral harvesting are not superseded by this part.

[b] Only 1/5 the indicated amount is allowed if nonselective gear is used, that is the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when $S + 5N = Q$, where S = selective harvest amount, N = nonselective harvest amount and Q = total harvest quota, for any single species on that bed.

[c] Only selective gear may be used in the FCZ seaward of the main Hawaiian Islands, i.e., south and east of a line midway between Nihoa and Nihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.

[d] S = Selective gear only, N = Nonselective or selective gear.

[e] No authorized fishing for coral.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) The Secretary will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1 through December 31 period.

(4) The Secretary will publish in the FEDERAL REGISTER a notice of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 680.22 Closures.

(a) *Determinations of closure and field orders.* If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or of the two-year fishing period at Makapuu bed, the Secretary will issue a field order closing the bed involved by publication of a notice in the FEDERAL REGISTER, and through appropriate news media. Such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 680.23 Size restrictions.

Pink coral harvested from the Makapuu bed (E-B-1), the Keahole Point bed (C-B-1), and the Kaena Point bed (C-B-2), must have attained a minimum height of ten inches. There are no size limits for precious coral from other beds or other species.

§ 680.24 Area restrictions.

Fishing for coral on the WestPac bed is not allowed. The specific area closed to fishing is all waters within a 2 nautical mile radius of the midpoint of 23° 18.0′ N. latitude; 162° 35.0′ W. longitude.

§ 680.25 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the FCZ of the main Hawaiian Islands, i.e., south and east of a line midway between Niihau and Nihoa Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and from exploratory areas other than the FCZ off the main Hawaiian Islands.

§ 680.26 Test fisheries. [Reserved]

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

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AUTHORITY: 16 U.S.C. 1801 *et seq.*

SOURCE: 48 FR 5562, Feb. 7, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 681.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific (FMP) developed by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

(b) These regulations govern commercial fishing for spiny lobsters by fishing vessels of the United States, within the U.S. fishery conservation zone (FCZ) seaward of American Samoa, Guam, and Hawaii. The management measures specified in Subpart B apply only in the FCZ seaward of the Northwestern Hawaiian Islands (Permit Area 1). The management measures specified in Subpart C apply only in the FCZ seaward of the main Hawaiian Islands (Permit Area 2).

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983]

§ 681.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Administrator means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

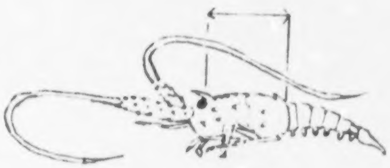
(b) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal, State, or Territorial agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying, and acting under the direction of, any person described in paragraph (a) of this definition.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace (see figure 1).

FIGURE 1. METHOD OF MEASURING CARAPACE LENGTH



Closed area means an area of the FCZ, that is closed to the harvest of spiny lobster.

Commercial fishing means fishing with the intent to sell all or part of the catch of spiny lobsters. All spiny lobster fishing in the Northwestern Hawaiian Islands (Permit Area 1) is considered commercial fishing.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(d) Any operations at sea in support of or in preparation for any activity described in paragraphs (a) through (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Western Pacific Fishery Management Council, holders of permits issued under this Part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in §§ 681.27 and 681.28 and who has specifically requested to be considered an "interested party".

Kona crab means a crustacean of the species *Ranina ranina*.

Land or Landing means bringing fish to shore or off-loading fish from a fishing vessel.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Management Area means the FCZ of the United States seaward of the Territory of American Samoa, the Territory of Guam, and the State of Hawaii.

NMFS means the National Marine Fisheries Service.

Official number means the documentation number issued by the Coast Guard or the number issued by a State or the Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

Permit Area 1 means the FCZ of the Hawaiian Islands Archipelago lying to the west of 161°0'W. longitude, commonly known as the Northwestern Hawaiian Islands.

Permit Area 2 means the FCZ of the Hawaiian Islands Archipelago lying to the east of 161°00' W. longitude, commonly known as the main Hawaiian Islands;

Permit Area 3 means the FCZ of the Territory of Guam and the FCZ of the Territory of American Samoa.

Permit Number means the number issued to a vessel under this part by the NMFS.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processing means changing the form of a product through such methods as freezing, cleaning, or removing tails. It does not include the boxing or packaging of a product.

Processor means any person that changes the form of a lobster through such methods as freezing, cleaning, or removing tails. It does not include a person that only boxes or packages lobster or lobster parts. It also does not include a person that catches lobsters and processes them at sea.

Regional Director means Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

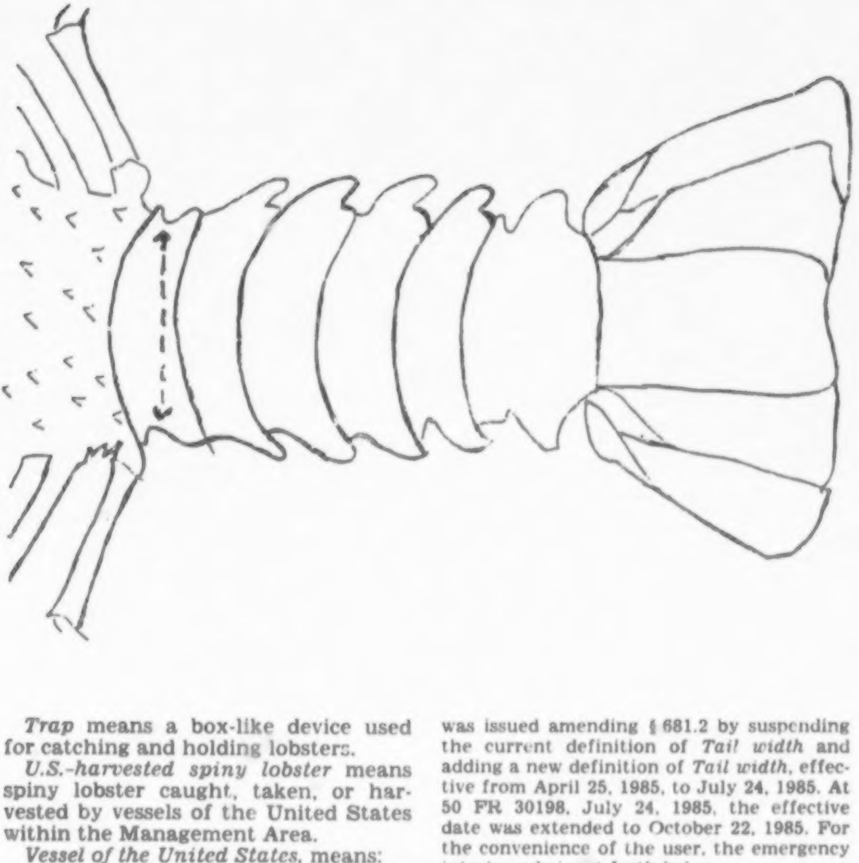
Slipper lobster means any crustacean of the genus *Scyllaridae*.

Spiny lobster means either of the following two species of crustaceans: *Panulirus marginatus* or *Panulirus penicillatus*.

State means the State of Hawaii, the Territory of American Samoa, and the Territory of Guam.

Tail width means the straight line distance between the lateral notches on the first tail segment (see Figure 2).

FIGURE 2. TAIL WIDTH



Trap means a box-like device used for catching and holding lobsters.

U.S.-harvested spiny lobster means spiny lobster caught, taken, or harvested by vessels of the United States within the Management Area.

Vessel of the United States, means:

(a) Any vessel documented or numbered by the Coast Guard under U.S. law; or

(b) Any vessel under five net tons registered under the laws of any State.

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983]

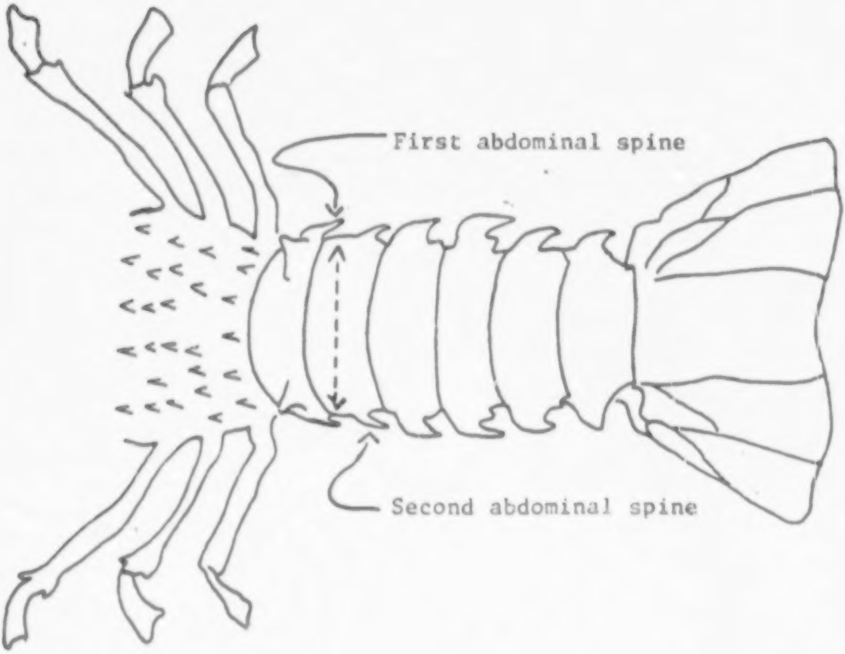
EFFECTIVE DATE NOTE: At 50 FR 18265, Apr. 30, 1985, an emergency interim rule was issued amending § 681.2 by suspending the current definition of *Tail width* and adding a new definition of *Tail width*, effective from April 25, 1985, to July 24, 1985. At 50 FR 30198, July 24, 1985, the effective date was extended to October 22, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 681.2 Definitions.

* * * * *

Tail width means the straight line distance across the tail measured at the widest spot between the first and second abdominal spines (see Figure 2).

FIGURE 2. TAIL WIDTH



§ 681.3 Relation to State law.

Any State law which applies to vessels registered under the laws of that State and which is consistent with this part (including any State landing law) continues in effect with respect to fishing activities covered by this part.

§ 681.4 Permits.

(a) *General.* (1) Any vessel of the United States engaged in commercial fishing for spiny lobsters in the Management Area must have a permit issued under this section.

(2) Each permit is valid for fishing only in the area specified in the permit. Permit areas are defined in § 681.2.

(3) Only one permit issued under this part is valid for one vessel at any one time.

(4) The holder of a permit allowing a vessel to fish one area may obtain a permit for that vessel to fish another area upon surrendering to the Regional Director any current permit issued for that vessel under this part.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 15 days before the date on which the applicant desires to have the permit made effective.

(2) Each application must be submitted on an appropriate form which may be obtained from the Regional Director. Each application must be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name;

(ii) The owner's name, mailing address, and telephone number;

(iii) The operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The vessel's official number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) The engine horsepower of the vessel;

(ix) The approximate fish-hold capacity of the vessel;

(x) The processing capacity of the vessel;

(xi) The type and quantity of lobster fishing gear used by the vessel;

(xii) The permit area in which the applicant proposes to fish;

(xiii) Whether the application is for a new permit or a renewal; and

(xiv) The number and expiration date of any prior permit for the vessel issued under this part.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days before the effective date of the change.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire on the June 30 following the effective date of the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been substantially altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for spiny lobster in the FCZ. Any permit issued under this section must be displayed for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(Approved by the Office of Management and Budget under control number 0648-0097)

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983; 49 FR 1044, Jan. 6, 1984; 49 FR 29612, July 23, 1984]

§ 681.5 Recordkeeping and reporting.

(a) *Reports.* The operator of any vessel engaged in commercial fishing for spiny lobster subject to this part must—

(1) Maintain on board the fishing vessel, while fishing for spiny lobster, an accurate and complete NMFS Daily Lobster Catch Report in English. All information specified in paragraph (b) of this section must be recorded within 24 hours after the completion of the fishing day.

(2) Within 72 hours of each landing of spiny lobsters, submit to the Regional Director the NMFS Daily Lobster Catch Report for that fishing trip.

(3) Maintain an accurate and complete NMFS Trip Processing and Sales Report in which is recorded the information specified in paragraph (c) of this section.

(4) Within 72 hours of each landing of spiny lobsters, submit to the Regional Director the NMFS Trip Processing and Sales Report covering all lobsters that have been sold. For any lobsters that have not been sold within 72 hours of landing, the operator must submit a supplemental NMFS Trip Processing and Sales Report within 72 hours of each subsequent sale of the remaining lobsters.

(5) Make the Daily Lobster Catch Report and the Trip Processing and

Sales Report available for inspection by an authorized officer or any employee of NMFS designated by the Regional Director to make such an inspection.

(b) *Daily Lobster Catch Report.* The Daily Lobster Catch Report must contain the following information for all spiny lobsters taken under this part:

Vessel information—

(i) Name of vessel;

(ii) Call sign of vessel;

(iii) Permit number of vessel;

(iv) Size of crew; and

(v) Number of traps.

(2) Fishing information—

(i) Location of lobster catch by statistical area as depicted in the NMFS Daily Lobster Catch Report form;

(ii) Date and time of trap deployment and number of traps deployed;

(iii) Date and time of trap retrieval and number of traps retrieved;

(iv) Number and species of legal spiny lobsters per trap deployment;

(v) Number and species of sublegal spiny lobsters per trap deployment;

(vi) Number and species of berried female spiny lobsters per trap deployment; and

(vii) Number of slipper lobsters and Kona crabs per trap deployment.

(3) Endangered species information:

(i) Whether monk seals or sea turtles are observed in the fishing area;

(ii) Whether monk seals or sea turtles are observed in the vicinity of the fishing gear;

(iii) Whether monk seals or sea turtles interfere with fishing operations;

(iv) Whether monk seals or sea turtles prey on released lobsters;

(v) Whether monk seals or sea turtles are entangled but released alive; and

(vi) Whether monk seals or sea turtles are entangled but released dead.

(4) Processing information:

(i) Weight of whole lobsters frozen at sea;

(ii) Weight of lobster tails frozen at sea;

(iii) Weight of whole lobsters to be frozen on land; and

(iv) Weight of lobster tails to be frozen on land.

(5) Sale information:

(i) Number, weight, and revenue from sale of live lobsters;

(ii) Number, weight, and revenue from sale of whole, frozen lobsters;

(iii) Number, weight, and revenue from sale of frozen tails;

(iv) Weight and revenue from sale of lobster byproducts.

(c) *Trip Processing and Sales Report.* The Trip Processing and Sales Report must contain the following information for all spiny lobsters taken under this part:

(1) Vessel information—

(i) Name of vessel; and

(ii) Permit number.

(2) Landing information—

(i) Date of landing; and

(ii) Port of landing.

(3) Processing information—

(i) Weight of whole lobsters frozen at sea;

(ii) Weight of lobster tails frozen at sea;

(iii) Weight of whole lobsters to be frozen on land; and

(iv) Weight of lobster tails to be frozen on land.

(4) Sales information—

(i) Number, weight, and revenue from sale of live lobsters;

(ii) Number, weight, and revenue from sale of whole, frozen lobsters;

(iii) Number, weight, and revenue from sale of frozen lobster tails; and

(iv) Weight and revenue from sale of lobster byproducts.

(d) *Processor annual report.* Processors of lobster products harvested in the management area must submit an annual report covering the period January 1 to December 31 to the Regional Director on a form which can be obtained from the Regional Director. This report is due by April 1 of the following year and must specify the following:

(1) Source (by FCZ surrounding each State) of lobsters processed;

(2) Poundage of lobsters processed by species;

(3) Number of individual lobsters processed by species;

(4) Method of processing;

(5) Form of final product; and

(6) Current actual lobster-processing capacity.

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 0648-0016. The information collection requirements contained in paragraph (c) were approved under control number 0648-0013)

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52924, Nov. 23, 1983; 49 FR 29612, July 23, 1984]

§ 681.6 Vessel identification.

(a) *Permit number.* Each fishing vessel subject to this part must display its permit number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The permit number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches in height for fishing vessels of 65 feet in length or longer, and at least ten inches in height for other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part must—

(1) Keep the displayed permit number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the permit number from an enforcement vessel or aircraft.

[48 FR 52924, Nov. 23, 1983]

§ 681.7 Prohibitions.

(a) It is unlawful for any person to:

(1) Use any vessel to fish for spiny lobster in a permit area unless a permit has been issued for that vessel and area as specified in § 681.4, and that permit is aboard the vessel;

(2) Falsify or fail to make, keep, maintain, or submit any logbook or other record or report required by § 681.5;

(3) Fail to affix and maintain vessel markings, as required by § 681.6;

(4) Fail to comply immediately with enforcement and boarding procedures specified in § 681.8;

(5) Refuse to carry an observer when requested to do so by the Regional Director under § 681.10;

(6) Fail to provide the 48-hour notice required by § 681.10(b);

(7) Possess, have custody or control of, ship, transport, offer for sale, sell, import, export, or land any spiny lobster which was taken or retained in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act;

(8) Refuse to allow an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(9) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an Authorized Officer in the conduct of any search or inspection described in paragraph (a)(8) of this section;

(10) Resist a lawful arrest for any act prohibited by this part;

(11) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person by an Authorized Officer, knowing that such other person has committed any act prohibited by this part;

(12) Transfer directly or indirectly, or attempt to transfer, any U.S.-harvested spiny lobster to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested spiny lobster; or

(13) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(b) In Permit Area 1, in addition to the prohibitions in paragraph (a) of this section, it is unlawful for any person to:

(1) Fish for, take, or retain spiny lobsters:

(i) By methods other than lobster traps or by hand, as specified in § 681.24; or

(ii) From closed areas specified in § 681.23;

(2) Retain or possess on a fishing vessel any spiny lobster or tail which is less than the minimum size specified in § 681.21, except for the tail-width allowance of § 681.21(b);

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(3) Possess on a fishing vessel any spiny lobster taken in Permit Area 1 in a condition such that neither its carapace length nor its tail width can be determined;

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing spiny lobster, as specified in § 681.22;

(5) Fail to report before landing, as specified in § 681.25; or

(6) Fail to comply with any protective measures promulgated under § 681.26 or § 681.27.

(c) In Permit Area 2, in addition to the prohibitions in paragraph (a) of this section, it is unlawful for any person to—

(1) Fish for, take, or retain spiny lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 681.34; or

(ii) In the months of June, July, and August, as specified in § 681.33.

(2) Retain or possess on a fishing vessel any spiny lobster taken in Permit Area 2 which is less than the minimum size specified in § 681.31;

(3) Possess on a fishing vessel any spiny lobster or spiny lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 681.35; or

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing spiny lobster, as specified in § 681.32.

[48 FR 5562, Feb. 7, 1983, as amended at 48 FR 52925, Nov. 23, 1983]

EFFECTIVE DATE NOTE: At 50 FR 18266 Apr. 30, 1985, an emergency interim rule was issued amending § 681.7 by removing from paragraph (b)(2) the phrase "except for the tail-width allowance of § 681.21(b)" and by removing from paragraph (b)(3) the phrase "neither its carapace length nor" and by changing the word "can" to "cannot", effective from April 25, 1985 to July 24, 1985. At 50 FR 30198, July 24, 1985, the effective date was extended to October 22, 1985.

§ 681.8 Enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

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(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1] [2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

(4) "L" (.-..) means "you should stop your vessel instantly."

[49 FR 9736, Mar. 15, 1984]

§ 681.9 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

[50 FR 39696, Sept. 30, 1985]

§ 681.10 Observers.

(a) All fishing vessels subject to this part must carry an observer when requested to do so by the Regional Director.

(b) The operator of a fishing vessel subject to this part shall notify the Regional Director of his departure 48 hours before leaving port to fish for spiny lobster in the Management Area. The operator shall provide this notice by contacting NMFS, Western Pacific Program Office, telephone (808) 955-8831, 2570 Dole Street, Honolulu, Hawaii.

Subpart B—Management Measures for Permit Area 1 (the Northwestern Hawaiian Islands)

§ 681.20 General.

The management measures specified in this subpart govern fishing for spiny lobster in the FCZ seaward of the Northwestern Hawaiian Islands (Permit Area 1).

§ 681.21 Size restrictions.

(a) *Whole lobsters.* Only spiny lobsters with a carapace length of 7.7 cm or greater may be retained.

(b) *Lobster tails.* If the carapace length cannot be determined, only lobsters with tails at least 5.0 cm wide may be retained, except for an allowance of up to 15 percent by number of the total catch per trip, which may have tail widths greater than or equal to 4.5 and less than 5.0 cm.

EFFECTIVE DATE NOTE: At 50 FR 18266, Apr. 30, 1985, an emergency interim rule was issued amending § 681.21 by suspending paragraphs (a) and (b) and adding paragraph (c), effective from April 25, 1985 to July 24, 1985. At 50 FR 30198, July 24, 1985, the effective date and suspension was extended to October 22, 1985. For the convenience of the user, the emergency interim rule is set forth below.

§ 681.21 Size restrictions.

* * * * *

(c) Only spiny lobsters with a tail width of 4.8 cm or greater may be retained.

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[1] Period (.) means a short flash of light.

[2] Dash (-) means a long flash of light.

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§ 681.22 Reproductive condition restrictions.

A female spiny lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female spiny lobsters.

§ 681.23 Closed areas (refugia).

(a) Spiny lobster fishing is not allowed within 20 nautical miles of Laysan Island.

(b) Spiny lobster fishing is not allowed within the FCZ landward of the 10 fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 681.24 Gear restrictions.

(a) Spiny lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(b) The smallest opening of an entryway of any spiny lobster trap may not allow any sphere or cylinder greater than 6.5 inches in diameter to pass from outside the trap to inside the trap.

[48 FR 5562, Feb. 7, 1983, as amended at 49 FR 408, Jan. 4, 1984]

§ 681.25 Landing requirements.

The operator of a fishing vessel that has taken spiny lobsters in the FCZ off the Northwestern Hawaiian Islands shall contact the U.S. Coast Guard, by radio or otherwise, at the 14th District, Honolulu, Hawaii (Telex: 392401); Pacific Area, San Francisco, California (Telex: 330427); or 17th District, Juneau, Alaska (Telex: 45305), at least 24 Hours before landings, and report the port, the approximate date, and time at which the lobsters will be landed.

§ 681.26 Experimental fishing.

(a) *General.* The Secretary may authorize experimental fishing for spiny lobster which would otherwise be prohibited by this part. No experimental fishing may be conducted unless an NMFS scientific observer is aboard the vessel.

(b) *Council review.* Before authorizing experimental fishing, the Secretary will submit to the Western Pacific Fishery Management Council a copy of the Plan under which the experimental fishing will be conducted, and request the Council's comments.

(c) *Implementation.* After authorization by the Secretary, as demonstrated by the placement of an NMFS scientific observer on a vessel, the vessel may fish in accordance with the plan described in paragraph (b) of this section

§ 681.27 Monk seal protective measures.

(a) *General.* This section establishes a procedure which will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the spiny lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the spiny lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. He will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* The Regional Director will investigate the incident reported and will attempt:

(1) To verify that the incident occurred;

(2) To determine the extent of the harm to the monk seal population;

(3) To determine the probability of a similar incident recurring;

(4) To determine details of the incident such as:

(i) The number of animals involved,

(ii) The cause of the mortality,

(iii) The age and sex of the dead animals,

(iv) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September), non-breeding season (October-February),

(v) The population estimates or counts of animals at the island where the incident occurred, and

(vi) Any other relevant information;

(5) To discover and evaluate any extenuating circumstances; and

(6) To evaluate any other relevant factors.

The Regional Director will make the results of his investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the spiny lobster fishery, the Regional Director will:

(1) Advise the interested parties of his conclusion and the facts upon which it is based; and

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions of appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will:

(1) Prepare a document which describes the incident, the protective measures proposed, and the reasons for the protective measures;

(2) Provide it to the interested parties; and

(3) Request their comments.

(g) *Implementation.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director still thinks that protective measures are necessary and appropriate, he will recommend the protective measures to the Administrator and provide notice of this recommendation to the Chairman of the Western Pacific Fishery Management Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Administrator concurs with the Regional Director's recommendation, a notice will be published in the FEDERAL REGISTER which includes:

(i) The protective measures;

(ii) The reasons for the protective measures; and

(iii) A description of the incident that triggered the procedure described in this section.

(h) *Notification of "no action".* If at any point in the process described in this section, the Regional Director or Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the FEDERAL REGISTER.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the Endangered Species Act;

(iii) Until the Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the FEDERAL REGISTER notice, not to exceed three months. The measures may be renewed for three months after again following procedures in paragraphs (b) through [illegible] this section.

(j) *Repeal.* (1) If the Administrator decides that protective measures may no longer be necessary for the protection of the monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Administrator will request advice on the proposed repeal of the protective measures.

(2) The Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Administrator decides to repeal the protective measures:

(i) Interested parties will be notified of the decision, and

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(ii) The notice of repeal and the reasons for the repeal will be published in the FEDERAL REGISTER.

§ 681.28 Monk seal emergency protective measures.

(a) *Determination of emergency.* If at any time during the process described in § 681.27 the Regional Director determines that an emergency exists involving monk seal mortality related to the spiny lobster fishery and that measures are needed immediately to protect the monk seal population, he will:

(1) Notify the interested parties of this determination and request their immediate advice and comments; and

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Administrator.

(b) *Implementation of emergency provisions.* If the Administrator agrees with the recommendation for emergency action:

(1) He will determine the appropriate emergency protective measures;

(2) A notice of the emergency protective measures will be published in the FEDERAL REGISTER; and

(3) He will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a fisherman at 12:01 a.m. local time of the day following the day the fisherman receives actual notice of the measures.

(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days if necessary to allow the completion of the procedures set out in § 681.27.

Subpart C—Management Measures for Permit Area 2 (the Main Hawaiian Islands)

SOURCE: 48 FR 52925, Nov. 23, 1983, unless otherwise noted.

§ 681.30 General.

The management measures specified in this subpart govern fishing for spiny lobster in the FCZ seaward of the main Hawaiian Islands (Permit Area 2).

§ 681.31 Size restrictions.

Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained.

§ 681.32 Reproductive condition restrictions.

A female spiny lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female spiny lobsters.

§ 681.33 Closed season.

Spiny lobster fishing is not allowed in Permit Area 2 during the months of June, July, and August.

§ 681.34 Gear restrictions.

Spiny lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 681.35 Lobster condition.

Any spiny lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. For more information on incorporation by reference, see the preliminary pages of this volume.

50 CFR, CHAPTER II (PARTS 200–299)
NATIONAL MARINE FISHERIES SERVICE

	50 CFR
Association of Official Analytical Chemists (AOAC)	
1111 North 19th Street, Arlington, VA 22209	
Official Methods of Analysis, 13th ed. (1980)	
Frozen Vegetables, sections 32.050, 32.051	267.107
Net Contents of Frozen Seafoods, section 18.001	267.107
Journal of the AOAC, Vol. 66, No. 2, (1983); Fourth Supplement to the 13th Ed.	
Cooking of Seafood Products, section 18.001	267.107

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